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Current Topics.

A Veteran of the Law.

SIR ARTHUR UNDERHILL, whose recollections and reflections have just been published, may justly claim to be one of the veterans of the law, with, moreover, an almost unique record of magnificent work accomplished in the literary treatment of legal subjects. Even to glance through the list of his contributions to professional literature is to realise something of his amazing industry and versatility. Not only on real property law, in which he did valiant service in its re-shaping, but also on such diverse subjects as torts, partnership, trusts, wills and settlements, he has been equally at home, and in their discussion able to illuminate them by a touch of happy humour, as, for example, when, in his admirable little book on partnership, the reader, particularly if he is a member of the Chancery Bar, is gratified by being told that "in no branch of drafting (except, perhaps, wills) is the wise saying of Solomon, that 'without counsel purposes are disappointed,' more often justified." For a number of years Sir ARTHUR added to his other activities that of acting as examiner for the Bar examinations, and in this capacity his sense of the ludicrous was greatly tickled by finding that one of the candidates, when required to state the rule in the now defunct *Shelley's Case*, curtly answered that "the rule in *Shelley's Case* is the same as the rule in any other case for the law is no respecter of persons"! Outside the law, Sir ARTHUR has many interests, including sketching and yachting, and on the latter subject he has written several books.

Rent Restriction.

THE law provides many examples of legislative fetters upon the freedom of individuals to enter into contracts. Generally these are imposed in the interests of the party whose position is in some sense disadvantageous—infants, mortgagors, borrowers from moneylenders and the like—and when the Rent and Mortgage Interest Restrictions Acts were passed the scarcity of housing accommodation and rising prices were capable of being enlisted in favour of the invasion of the notion that a man is entitled to do what he likes with his own. The operation of these Acts has been extended from time to time and the desirability or otherwise of their further utility is a question which has exercised not only the interested parties—landlords and tenants of controlled premises—but those whose duty it is to promote the fairness of the law among the general community. The question was raised in Parliament some months ago and as a result an Inter-Departmental Committee on the Rent Restrictions Acts was set up by the Minister of Health last May. Reports have now been issued (Cmd. 5621, H.M. Stationery Office, price 1s. net) in the form of a majority report signed by the chairman (Lord Ridley) and eleven members, subject to a reservation by two members, and a minority report signed by three members. The former, which proceeds upon the principles that the question of continuing control of any particular class of house must be regarded as dependent on whether the shortage of houses in that class is at an end or is likely to end within a reasonable period and that restrictions should at once be lifted from any class of property as soon as it can be shown that they are no longer needed in the general interests, advocates the decontrol throughout Great Britain in 1938 of the houses in the upper range of the present controlled Class B. These comprise houses with a rateable value, in 1931, between £35 and £45 in the Metropolitan Police District and Scotland, and between £20 and £35 elsewhere. The remainder of the houses in Class B, it is recommended, should be combined with those comprised in the existing Class C to form one class in which control should be continuous notwithstanding that the landlord may obtain vacant possession. Thus, the new upper limit of rateable value in the respective areas already referred to would be £35 and £20.

Progressive Decontrol.

THE majority report puts forward in relation to England and Wales a scheme for the gradual reduction and eventual termination of control over a period of years. Features of the scheme are the successive lowering, normally by £5 annually, of the upper limit of rateable value for the controlled class of house and the application of the reduction in different districts according to the percentage of overcrowding therein. The scheme would be brought into operation in two stages. In 1940 the Minister of Health would settle the areas to be treated as single units for control purposes, and the upper rateable value limit of the controlled class would be reduced by £5 in all areas where there was less than 4 per cent. of overcrowding. In all other areas the limits of the controlled class would remain unchanged. In 1942 a time-table would come into operation for the eventual termination of control in various years from 1944 to 1950, according to the percentage of overcrowding in the respective areas. Where the latter

was under 1 per cent. control would cease in 1944; where it was over 4 per cent., in 1950, while intervening dates would apply where the percentage figure was between those stated. It is claimed that in this way all houses in the present Class C would remain controlled until 1942, and that the smallest houses would be protected for the longest time. Moreover, the scheme would greatly reduce the uncertainty as to the future of the Acts—a fact which has in the past created difficulties for landlords and tenants alike. The two members of the committee who sign the majority report with the reservation previously alluded to deprecate the employment of the overcrowding standard as a basis for the reduction or termination of control and favour a further investigation of the position in five years' time. As to Scotland, where the housing shortage is considered to be more acute, the majority report advocates further investigation before any measure of decontrol, other than that previously alluded to, is introduced. According to the minority report control of some kind is desirable as a permanent feature of the housing service. The present statutory standard of overcrowding is thought to provide too low a basis for the reduction and termination of control, and the members signing this report do not consider that the assumption underlying the utilisation of an automatic time-table that housing conditions will continue to improve is by any means certain to be justified, while, in any case, a fixed period for the termination of control is thought to be undesirable. It is urged, moreover, that consideration of the question of rent control ought not to be limited to the narrow field of housing implied by the use of the term "working-class," as the real housing shortage is much greater than would appear from the figures relating to this limited field, and is not confined to the working-class so narrowly defined. Such, in brief outline, are the main features of the reports. It is, however, impossible to deal with the matter exhaustively here, and readers desiring further information must be referred to the reports themselves, which are obtainable from H.M. Stationery Office at the price previously indicated.

Matrimonial Causes.

THE year 1938 opens with a less formidable list of new Acts and Rules than is usually the case at the beginning of a year; but if change is synonymous with quality, any deficiency in quantity is more than balanced by the quality of the new law which came into operation on 1st January. The provisions of the Matrimonial Causes Act, 1937, which operates from the beginning of the present year, have been so extensively dealt with in our columns that any further treatment here would be mere repetition. Readers may, however, be referred to the series of articles on the Act which appeared in our issues of 4th and 11th September (81 SOL. J. 707, 724). The Matrimonial Causes Rules, which came into force on the same day, were referred to recently in this column and are dealt with on p. 5 of the present issue. It remains to be seen whether the appointment of two additional judges to the Probate, Divorce and Admiralty Division of the High Court of Justice will provide sufficient judicial strength for the increase of divorce business which must be regarded as one of the inevitable consequences of the foregoing legislative innovations.

Salvage by Crown Vessels.

AFTER some divergence of judicial opinion in the courts of first instance, and in the Court of Appeal, the House of Lords has now in the case of *Admiralty Commissioners* v. *The Valverda* (*Owners*), definitely laid it down that in respect of salvage service rendered by any ship belonging to His Majesty, unless that ship is a ship "specially equipped with salvage plant, or is a tug," within the meaning of s. 1 of the Merchant Shipping (Salvage) Act, 1916, no award can be claimed, however meritorious the service may have been. This result seems to be in accordance with the explicit language of s. 557 of the Merchant Shipping Act, 1894, but, while this is so, the question may be raised as to the wisdom of the policy of the legislation which thus precludes the right on the part of the Admiralty to claim in respect of salvage rendered by one or more of His Majesty's vessels—in this case rendered at a considerable expenditure, both of time and material. It is a little difficult to see why the State should be in a less favoured position than other persons rendering salvage services, and, indeed, should in a sense be penalized for acting the role of the Good Samaritan. The oddity of the situation is enhanced by the fact that the officers and crew of the vessels are entitled to an award, whereas the Crown is debarred from this right; it scarcely seems logical, but it appears to be the law.

Agriculture: Forthcoming Legislation.

MENTION was recently made in *The Times* of four Bills which it is hoped may receive the attention of Parliament on resumption of business at the beginning of February. The note on the subject appeared in a part of that paper which may not ordinarily be scanned by our readers, and it may therefore be convenient to make some brief reference to the subject here. The measures themselves are concerned with subjects as diverse (within limits) as milk, bacon, housing and rabbits. As to the first two, it is intimated that the Government proposals for assisting the bacon industry will probably take priority over the Milk Bill now in preparation in view of the fact that the milk industry already enjoys the advantages of existing legislation. As a preliminary to assisting the bacon industry, it is intimated that the Government desire to be assured that the re-organisation of the bacon factories will so proceed during the period when assistance is provided as to promise a reduction in curing costs which will enable both producers and curers to work at a profit. Projected housing legislation in the direction of making further Exchequer assistance available towards the erection of houses for the agricultural population is in line with the Minister of Health's concern with regard to the rural housing problem which has frequently been considered in these columns, but it may be questioned whether the drift of the population to the towns can be very largely attributed to the shortage of housing accommodation in the country. The object of the fourth Bill is to give effect to the recommendations of the Select Committee of the House of Lords on the subject of damage by rabbits, and those who have suffered from the depredations of these vermin will note with regret the probable postponement of this measure in favour of what are regarded as more pressing matters. It would be hazardous to attempt to forecast the ultimate fate of these different measures, but it is satisfactory to be able to record that the year 1938 opens with prospective legislation which in various ways should prove to be of real assistance to the section of the community occupied with agricultural pursuits.

Completing Purchases: Non-Professional Agents.

THE last number of "The Law Society's Gazette" makes reference to a matter of general importance which should be shortly indicated in these columns. It is recalled that on 6th November, 1936, the Council of The Law Society resolved that the practice of employing bankers and other non-professional agents in lieu of solicitors in conveyancing matters was to be deprecated and should be discontinued. An article on the subject appeared in the issue of the same periodical for January of last year, but the Council has been informed by a member of the Society that since it appeared his firm has been doing its best to give effect to the Council's resolution and has found difficulty in so doing, as many solicitors have stated that they have not heard of the resolution. The article is, therefore, reprinted in the current issue of our contemporary. Reference is made therein to a growing tendency, particularly in small transactions, where the examination of title deeds or the completion of a purchase

would involve a journey, for purchaser's solicitors " no doubt with the object of saving themselves the journey and their client expense " to request the vendor's solicitor's permission to allow production of the title deeds or the completion of the purchase to take place at or through the medium of a bank instead of either attending personally or employing another solicitor as agent to examine the deeds or to complete the purchase. The Council deprecated such a practice as tending to encourage bankers and other non-professional agents to transact solicitors' work, and it is suggested that if on the completion of a purchase the precaution of employing a professional agent is not adopted the purchaser's solicitor incurs a risk by losing the benefit of s. 69 of the Law of Property Act, 1925. That section, it will be remembered, provides that where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be a sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt. The Council is of opinion that the employment of professional agents would be encouraged if in small purchases professional agents were careful to charge a reasonable fee having regard to the amount of the purchase money, and it is pointed out that, while in small cases it is generally possible and largely customary to complete by post, any risk involved by completion elsewhere than at the vendor's office or at the office of his mortgagees must be at the risk of the purchaser and not of the vendor. We desire to express our very real indebtedness to our contemporary for our ability to bring this matter to the attention of our readers

Rules and Orders: Tithe Rules, 1937.

THE attention of readers is drawn to the Tithe Rules, 1937 (S.R. & O., 1937, No. 1144/L.15), which have been made by the Lord Chancellor in exercise of powers conferred upon him by s. 3 of the Tithe Act, 1891, which authorises the making of rules for the purposes of the Act, and s. 16 of the Tithe Act, 1936, which deals with the recovery by the Tithe Redemption Commission of annuities from the owners of land. The rules set out the procedure to be observed in county court proceedings instituted to this end and prescribe a number of forms. Part I, rr. 2–19, deals with claims in respect of instalments of annuities, and arrears of tithe rent-charge, for the recovery of which proceedings have not been commenced before 1st April, 1937; Part II, rr. 20 and 21, with proceedings for the recovery of arrears of extraordinary tithe rent-charge; while Part III, rr. 22 and 23, contains a number of amendments to the Tithe Rent-charge Recovery Rules, 1891, as subsequently amended. The Provisional Tithe Rules, 1937, continue in operation till 1st February, 1938, on which day they are to be superseded and replaced by these rules, without prejudice, however, to any direction given under r. 14 of the Provisional Rules for the continuance of a receivership. The new rules are published by H.M. Stationery Office, price 7d. net.

Recent Decisions.

THE following decisions given during the concluding day of last term and reserved judgments delivered by the House of Lords on the following day remain to be noted:—

In *Caesar and Another* v. *Bohrmann and Others* (*The Times*, 22nd December), LANGTON, J., pronounced for a will and four codicils subject to the deletion of a clause in the last of them which purported to give the residue to American instead of English charities, and which, it was held, had been dictated by an insane delusion entertained by the testator concerning the London County Council. With reference to certain expert evidence and opinion, the learned judge declined to accede to the argument that a paranoid psychopath was incapable of making a will. The law recognised no halfway house between delusional insanity and sanity. See *Banks* v. *Goodfellow*, L.R. 5 Q.B. 549, 565.

In *Russian and English Bank* v. *Baring Brothers & Co.* (*The Times*, 22nd December), BENNETT, J., in circumstances which cannot be gone into here, declined to make the declaration claimed by the plaintiffs that they were the assignees of a sum of £180,000, part of an account known as the Compte Spécial which the Imperial Russian Government had with the defendants, or to grant an order of the payment over of that amount.

In *Thomas* v. *Hammersmith Borough Council* (*The Times*, 22nd December), PORTER, J., held that an architect, who had been appointed by a resolution under seal of the defendant council and instructed to prepare working drawings of a proposed town hall, and had proceeded therewith almost to completion, was entitled to £7,000 damages for loss caused to him by the abandonment of the scheme. Three thousand pounds had been paid to the plaintiff, and judgment for the balance with costs was entered for him. A stay of execution was granted on terms pending consideration by the defendants of the question of an appeal.

In *Admiralty Commissioners* v. *Owners of M.V. Valverda* (*The Times*, 23rd December), the House of Lords upheld a decision of the Court of Appeal (SLESSER and SCOTT, L.JJ., GREER, L.J., dissenting)—which had reversed a judgment of BRANSON, J.—to the effect that s. 557 (1) of the Merchant Shipping Act, 1894, operated to prohibit the Admiralty from claiming salvage services rendered by ships of His Majesty's Navy to an oil tanker in distress in the Atlantic, and that the position was not altered by an agreement for salvage remuneration which stipulated for such salvage remuneration as was " not barred by the conjoint operation of " the Merchant Shipping Act, 1894, and the Merchant Shipping (Salvage) Act, 1916. The decision of the Court of Appeal was reported in our issue of 2nd January, 1937 (81 SOL. J. 14).

In *George Legge & Son, Ltd.* v. *Wenlock Corporation* (*The Times*, 23rd December), the House of Lords upheld a decision of the Court of Appeal (SLESSER, ROMER and GREENE, L.JJ.)—which had reversed a decision of CROSSMAN, J.—to the effect that it is not possible in law for the status of a natural stream to be changed to that of a sewer by the discharge of sewage into it after the coming into operation of the Rivers Pollution Prevention Act, 1876. *Airdrie Magistrates* v. *Lanark County Council* [1910] A.C. 286, followed. The decision of the Court of Appeal was reported in our issue of 14th November, 1936 (80 SOL. J. 913), and an article on the subject appeared in our issue of 3rd April, 1937. The question of law was formulated under Ord. XXXIV, r. 2, and LORD MACMILLAN, who observed that there might have been some justification for the adoption of that exceptional course in the special circumstances, said that it was to be hoped that it would not become a frequent practice, for it might readily lead to embarrassment.

In *Herniman* v. *Smith* (*The Times*, 23rd December), the House of Lords upheld a decision of the Court of Appeal (GREER, GREENE and SCOTT, L.JJ.) reversing a judgment for £5,000 entered for the plaintiff (the appellant) in an action for malicious prosecution tried before TALBOT, J., and a common jury. LORD ATKIN intimated that the question of the absence of reasonable and probable cause in such cases was one of fact for the judge, that in the present case there was no evidence on which the judge could leave any question to the jury, and that the judge should have decided that there was no want of reasonable and probable cause. The present action arose from the plaintiff's conviction on charges of conspiracy to defraud and obtaining money by false pretences which had been quashed by the Court of Criminal Appeal. The plaintiff's innocence was therefore established and the issue was confined to the reasonable effect of the evidence from time to time upon the defendant's mind

Criminal Law and Practice.

FOOT PASSENGER CROSSINGS AGAIN.

THE subject of foot passenger crossings is fascinating and also of vital interest both to the public and to advocates in the police courts, and on those grounds we crave forgiveness for referring to the subject once more (see 81 SOL. J. 348, 448 and 912). On 8th December, 1937, at Lambeth Police Court, Lady Hailsham was acquitted of a charge of failing to allow free and uninterrupted passage to a foot passenger on the carriageway at a crossing, under circumstances which are rather different from the cases which we have discussed previously in these columns.

The evidence was that Lady Hailsham drove the car, with Lord Hailsham as a passenger, between three women and two men who were crossing in opposite directions, and caused them to stop. Replying to the magistrate the police constable who gave evidence said that the foot passengers did not waive their rights. To this the magistrate replied that one could never be certain whether a pedestrian was waiving his right—stopping voluntarily—or having his passage interrupted. He added that there was no evidence that anyone had to jump out of the way, and that it was that kind of case that made these crossings unsatisfactory.

To imply that there must be evidence on charges of this sort that pedestrians jumped out of the way seems, with respect to the learned magistrate, to be the sort of statement which in itself tends to make the crossings unsatisfactory. If that were the true view of the law, it would be well worthy of caricature, as indeed it was caricatured by a famous cartoonist a few days later in an evening paper. If, in fact, a defendant approached a crossing at such a speed as to be able if necessary to stop before reaching the crossing where there is a pedestrian on the crossing, so as to comply with reg. 4 of the London regulations and the parallel regulation under the provincial regulations, it does not follow that he has not committed the offence of failing to allow free and uninterrupted passage to a foot passenger who is on the crossing under reg. 5. It is submitted that the offence may be committed even though the pedestrian takes the prudent course of waiving his right in the interests of his life and limb. The pedestrian only waives his right where he sees that his passage along the carriageway is interrupted, and therefore his waiver is, if anything, evidence of the motorist's guilt, and not of his innocence. It is fair to add that the evidence for the defence was that no one was on the crossing, and that the police constable who gave evidence admitted that the defendant possibly said "I slowed down but no one was there," but that he could not remember whether she in fact said so. The criticism that we have ventured to submit is, of course, confined to the remarks of the learned magistrate as to waiver by pedestrians of their rights, and we have no doubt that the ultimate decision was right and proper having regard to all the evidence.

SUMMARY TRIAL OF ATTEMPTS TO COMMIT MISDEMEANOURS.

THE stipendiary magistrate at Bow Street Police Court recently referred to what he called a "lapse on the part of the legislature" in connection with a case in which a person was charged with attempting to steal a motor car, and alternatively with attempting to take and drive the car away without the owner's consent and unlawfully tampering with the mechanism. The prosecuting solicitor said that as attempting to take and drive the car away without consent was not a specified statutory offence but a common law misdemeanour it was not triable summarily, but only on indictment. It appeared that the car had not been driven away, but it was alleged that only the steering wheel had been turned.

The learned magistrate said that it was a ridiculous position that some lapse on the part of the legislature rendered it impossible for him to try the charge of attempt, although he could try a charge of the full offence. After hearing the evidence he said that as at present advised he saw no reason why he should not try a charge of the full offence, as to turn the steering wheel as alleged was a necessary part of the act of driving.

The full offence was created by s. 28 of the Road Traffic Act, 1930, which provides: "Every person who takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be liable—(*a*) on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding £50; (*b*) on conviction on indictment, to imprisonment for a term not exceeding twelve months or to a fine not exceeding £100, or to both such imprisonment and fine.

There is ample authority for the proposition that an attempt to commit a misdemeanour is itself an indictable misdemeanour. (See "Russell on Crimes," seventh ed., p. 10, and Archbold on "Criminal Pleading Evidence and Practice," 29th ed., p. 1427.) The question that arises is whether the offence under s. 28 of the Road Traffic Act, 1930, set out above, is a misdemeanour. Halsbury's "Laws of England," Vol. 9, p. 26 (Hailsham ed.), states: "All crimes which are not treasons or felonies are misdemeanours either by common law or by statute." In *Du Cros* v. *Lambourne* [1907] 1 K.B. 40, at p. 44, Lord Alverstone, C.J., cited with approval the definition of misdemeanour in Burn's "Justice," 30th ed., Vol. 3, at p. 1008, where it is said: "This word, in its usual acceptation, is applied to all those crimes and offences for which the law had not provided a particular name . . . A misdemeanour is, in truth, any crime less than felony; and the word is generally used in contradistinction to felony; and misdemeanours comprehend all indictable offences which do not amount to felony." With regard to the meaning of the word in s. 8 of the Accessories and Abettors Act, 1861, he said that he was inclined to think that the word was used in that section in its wide sense and was not limited to misdemeanours triable on indictment. Ridley, J., reserved his opinion on the point.

The Act of 1861 makes triable on indictment the offence of aiding, abetting, counselling or procuring the commission of any misdemeanour and is clearly general in intention. In *Pickup* v. *The Dental Board of the United Kingdom* [1928] 2 K.B. 459, the court cited Lord Alverstone's dictum in *Du Cros* v. *Lambourne*, *supra*, with approval, in connection with the meaning of the word "misdemeanour" in s. 13 of the Dentists Act, 1878.

It is arguable that the word "misdemeanour" in the present case is to be construed in its more restricted sense of indictable misdemeanour, and that therefore an attempt to commit an offence which is triable summarily is itself triably summarily. The lapse, if any, on the part of the legislature consists either in not including generally attempts to commit summarily triable offences in the Second Schedule of the Criminal Justice Act, 1925, in which the court may, with the consent of the accused, try cases specified in that schedule summarily under s. 24 of that Act, or in not specially making an attempt to commit the full offence under s. 28 of the Road Traffic Act, 1930, triable summarily. It may be necessary to clarify the point by legislation. In the meantime, it would be useful if the matter were argued before an authoritative tribunal.

Centuries-old prison cells at Buckinghamshire County Hall at Aylesbury are to be converted into a muniment store for county documents, and new cells are being constructed under the Crown Court.

After holding the clerkship of Maryport magistrates for more than one hundred years, the firm of Tyson & Hobson, solicitors, relinquished it recently, when Mr. W. H. Hobson retired owing to ill-health. Mr. Hobson was admitted a solicitor in 1882.

The Matrimonial Causes Rules 1937.

On 1st January, 1938, a new code of matrimonial procedure, superseding the Rules of 1924, comes into operation. Orders XXXVA and XXXVIA are revoked. The new rules will apply to pending causes, as in a particular case, judge or registrar thinks fit. (Rule 82.)

The old rules are concise; the new rules are precise. The code, in effect, is incorporated in the Rules of the Supreme Court, which, by r. 81, apply, *with the necessary modifications*, to matrimonial causes.

The Character of the Changes.

The changes, broadly, are of three kinds. First, numerous *alterations in classification*. Thus, Service of all documents (excluding service upon infants and persons of unsound mind) is compendiously described in rr. 8–11. Secondly, the *terminology* has been amplified or even recast. Thus, formerly, the Rules of the Supreme Court applied in matters not dealt with by the matrimonial rules; by r. 81 the larger code will apply to matrimonial procedure, "with the necessary modifications." Again, the petition must now contain a statement (if it be the fact) that there has been no address of cohabitation within the jurisdiction, and that the paternity of any child of the wife (if it be the fact) is disputed. The grounds for divorce must be set out "*specifically*." (See r. 4, "Form of Petition.") No reply shall be filed without leave, except where relief is claimed in the answer. (Rule 18.) The rules relating to *Guardians ad litem* have been amplified in r. 64. The rule as to mode of trial (r. 29) modifies the old r. 30B.

Thirdly, the Matrimonial Causes Act, 1937 (here called "the Act"), has necessitated *new rules;* with these this article will deal. The beneficent results of the Act will depend, to no small extent, upon the administration of the new rules.

Applications for Leave to present Petitions.

Rule 2 deals with applications for leave to present a petition. The procedure is by *Originating Summons*. The affidavit in support should specify the grounds of the application, particulars of the hardship or depravity, particulars of the children, attempts made at reconciliation, and *any circumstances which may assist the court to determine* whether there is a reasonable probability of reconciliation. A copy of the intended petition should be exhibited. Within fourteen days after appearance the respondent may file an affidavit in answer, and within fourteen days after delivery the applicant may file an affidavit in reply. The registrar holds a "preliminary consideration" of the application. He must consider in the presence of the parties who attend, or of their solicitors, any reasonable probability of reconciliation and report in writing to the judge. The report is filed; the parties are entitled to a copy for the prescribed fee, and the judge subsequently hears the application in chambers.

Jurisdiction: Husband's Change of Domicile.

By r. 4 (1) (*e*), if, at the institution of a cause by a wife, the husband has deserted her, or has been deported, and "there is reason to believe that he has changed his domicile," the petition should specify his domicile immediately before the desertion or deportation, the date and circumstances of the desertion, or the date of the deportation order.

Petition for Divorce.

Proceedings based upon the new s. 176 (*d*) of the Judicature Act, 1925, as also proceedings for nullity under s. 7 (1) (*b*) of the 1937 Act, will not come within the category of an "undefended cause." (Rule 1 (3).)

By r. 4 (1) (*g*) "the matrimonial offences alleged *or other grounds*" must be set out *specifically* in separate paragraphs. It should further be stated whether there have been in the High Court *or a court of summary jurisdiction* any previous proceedings; their date and result; and whether there has since been any resumption of cohabitation. (Rule 4 (1) (*f*).)

Rule 64 on "*Infants and Persons of Unsound Mind*" is of great importance. Such persons begin proceedings by their next friend and defend or intervene by the guardian appointed for that purpose. Personal service upon an infant is effected upon the father or guardian or upon the person with whom the infant resides or under whose care he is. Personal service upon a person of unsound mind is effected upon the person with whom the person of unsound mind resides or under whose care he is. The document must be endorsed with a notice that the contents or purport shall be communicated to the person of unsound mind unless the person upon whom the document is actually served is satisfied, after consulting the doctor or the medical officer of the institution, that communication would be detrimental to the mental condition of the patient. If there is a committee or a receiver the contents and purport must also be communicated to him (para. 4). After service the other party should file an affidavit, made by the person with whom the person of unsound mind resides or under whose care he is, stating whether the contents or purport of the document have been communicated to the latter, and, if not, the reasons for non-communication. The "next friend" of an infant or person of unsound mind, before his name is used in any proceedings, must first sign a written authority to the solicitor for that purpose. A solicitor must attest the authority, certifying that the proposed next friend has no adverse interest in the proceedings. For the appointment of a guardian no order is necessary, but the solicitor seeking to enter an appearance must make and file an affidavit of fitness. (Form 14.) If an order has been made against a person of unsound mind under the Lunacy Act, 1890, a certificate should be exhibited that the Management Department of the High Court approves the proposed guardian (para. 7). Where no appearance has been entered on behalf of the infant or person of unsound mind, the petitioner or applicant should apply for an order that a proper person be assigned guardian in the proceedings (para. 8). If proceedings are begun against a "mental defective," or against a person for nullity on the ground that at the time of the marriage that person was of unsound mind or a mental defective, or subject to recurrent fits of insanity or epilepsy, the petitioner must not proceed without leave, whether appearance is entered or not; the registrar may order that some proper person be assigned as guardian (para. 9).

Duty of Court on Presentation of Petition.

By r. 4 (3) (*e*), a petitioner, in appropriate cases, should insert a prayer that the court will *exercise its discretion* notwithstanding the petitioner's adultery.

By r. 6 (1) the affidavit in support of the petition shall state (except in a petition for restitution of conjugal rights) *whether* the petition is presented or prosecuted in collusion with the respondent or *any co-respondent*.

The affidavit by r. 6 (2) (*a*) must further state in a petition for divorce and judicial separation, where the ground is adultery, *whether* the petitioner has been accessory to, or connived at, or condoned the adultery, and, where the ground is cruelty, whether the petitioner has condoned the cruelty.

An application for leave to file a supplemental petition must similarly depose to the existence or otherwise of collusion, connivance or condonation. (Rule 14 (2).) Similarly, in the affidavit verifying the answer which contains matter other than a simple denial. (Rule 17 (1).)

Rule 28 deals fully with a *Discretion Statement*, which must be lodged in the registry by the party desiring the court to exercise its discretion on that party's behalf, notwithstanding adultery. The King's Proctor, but no other person except by the direction of the *judge*, may inspect the Statement. Where the Statement alleges a matrimonial offence by the other spouse, which has not been pleaded, notice

must be forthwith given to the other spouse; but if, at the hearing, the court thinks that failure to give this notice was justified, it may be dispensed with. A Discretion Statement is not evidence against the maker in any matrimonial cause or matter—neither the fact of its lodgment, nor its contents, nor the fact that notice has been given—unless the maker himself in open court puts it in evidence.

The *place of trial* of a petition depends on the directions by the registrar. (Rule 30.) In undefended causes the solicitor having conduct of the proceedings should file an affidavit stating the locality of the residence of the proposed witnesses and any other relevant facts. In defended causes triable at Assizes the party desiring to set the cause down for trial, before applying for the registrar's certificate, should give notice of the locale desired, and should lodge with his application a certificate that such notice has been given. A party who does not consent may apply to vary the locale. The registrar will have regard to *all the circumstances of the case*, including the convenience of the parties and their witnesses, costs, date of hearing, facilities for trial in London or at Assizes, and the burden on the jurors.

New Grounds for Nullity Decree.

The affidavit in support of a petition based upon s. 7 (1) (*b*) (*c*) and (*d*), must state whether the petitioner was, at the time of the marriage, ignorant of the facts alleged, and whether intercourse with the petitioner's consent has taken place since the discovery by the petitioner of the existence of grounds for a decree. (Rule 6 (2) (*b*).)

Rule 24 ("Medical Inspection") deals with two different types of cases. In nullity proceedings on the grounds of impotence or incapacity of the respondent, the petitioner must, after an answer has been filed, apply for the appointment of a medical inspector to examine the parties. The registrar must appoint two inspectors of the court to examine the parties and to report to the court, and he *must order* the parties to attend. On a nullity petition on the ground of non-consummation, owing to the respondent's wilful refusal to consummate, either party *may* apply for the appointment of medical inspectors to examine the parties. The registrar appoints two inspectors and either party is *at liberty to submit himself* for medical examination. Reports are filed and submitted to the court, and a party is entitled to a copy upon payment of the prescribed fee.

Decree of Presumption of Death and Dissolution of Marriage.

The petition under s. 8 should contain a statement of the last place of cohabitation, the circumstances in which the parties ceased to cohabit, and the date when and the place where the respondent was last seen or heard of. (Rule 4 (1) (*h*).) The affidavit in support should state the steps taken to trace the respondent. (Rule 6 (2) (*c*).)

Decree Absolute.

If more than twelve months have elapsed since decree *nisi* the petitioner should file an affidavit accounting for the delay and *the application will not proceed without the leave of a judge.* (Rule 40.) An application by a spouse to make absolute a decree *nisi* pronounced against him shall be by motion in open court in the Probate Division in London.

Maintenance and Settlement of Property.

Rule 3 deals with an application for "ancillary relief," of which there are no less than nine different types. These are applications for (A) *alimony pending suit* (except where claimed in the petition); (B) *maintenance of the children*; (C) *periodical payments* after a decree for restitution; (D) *permanent alimony*; (E) *maintenance*; (F) *a modification order*; (G) *a secured provision*; (H) *variation of marriage settlements*; (I) *settlement of a wife's property* for the benefit of her husband and/or of the children.

A wife petitioner who has not included a prayer for *alimony pending suit* may apply at any time after filing the petition, and a respondent wife (and a respondent husband against whom a petition for divorce or judicial separation is presented) may apply at any time after entering appearance. (Rule 42.)

An application for *maintenance of children* may be made by a petitioner at any time after service of a petition in which custody is claimed, or by the respondent after entering appearance, or by any other person who has obtained leave to intervene for the purpose of applying for custody. (Rule 43.)

An application in the case of divorce proceedings for *maintenance, a secured provision, variation of marriage settlements*, or *settlement of a wife's property*, may be made by the petitioner at any time after the time for appearance has expired, and by a respondent after entering appearance, but not later than one month after decree absolute, save by leave of a judge. An application in the case of proceedings for judicial separation, for settlement of a wife's property, may be made after the decree. Upon an application for variation of settlements, settlement of a wife's property, or a secured provision, the registrar (unless the proposed variation will not be detrimental to the children, or the settlement or secured provision makes adequate provision for them) must see that the children are separately represented; he may assign a guardian *ad litem* by whom any infant children may appear on the application. The guardian must file an affidavit of fitness. (Rule 44.)

An application for *permanent alimony* may be made at any time after a decree for restitution of conjugal rights or for judicial separation. (Rule 45.)

An application for *periodical payments* or for securing them to a wife may be made at any time after non-compliance with a restitution decree; if the application is for the benefit of the children, by a person who has obtained leave to intervene in order to apply for custody or who has custody under a court order, he must first appear. (Rule 46.)

At any time a petitioner, or a respondent who has appeared, may apply for a *modification order.* (Rule 47.)

Within fourteen days after service upon him of a notice of application for alimony pending suit, permanent alimony, maintenance, maintenance of the children, a secured provision, or for securing periodical payments to a wife (or within fourteen days after appearance), he should similarly file an affidavit with full particulars of property and income. He need not file this affidavit, however, if the wife gives notice of her intention to proceed upon the evidence already filed on her application for alimony pending suit. (This privilege does not apply to a case of alimony pending suit.) (Rule 48.)

The application should be served upon the respondents, the trustees of settlements, and upon any other person the registrar directs, who may, within fourteen days after appearance, file an affidavit in answer. (Rule 48.) A wife may file an affidavit in reply to an allegation by her husband that she has property or income. But no further evidence can be filed without leave. (Rule 50.) In the case of an application for a modification order, particulars should be given of property and income and the grounds of the application. The respondent may file an affidavit in reply; no further evidence without leave. (Rule 51.)

On any application for ancillary relief, the registrar must make a preliminary investigation of the allegations.

The spouses or other person he may order to attend. He may take oral evidence. Discovery may be ordered, or production, or further affidavits. (Rule 52.)

After this investigation he may either make an order or refer the application, or any question, to the judge—in which case an interim order may be made. (Rule 53.)

But if the application be for the settlement of the wife's property or variation of marriage settlements where there are children, the registrar must report the result of his investigations to the judge, adjourn the application to the judge, and file his report. Any party is entitled, on payment of the fee, to a copy of this report. The judge may confirm or vary the report or make such other order as he thinks fit. (Rule 54.)

Company Law and Practice.

Goodwill.

THE item of goodwill in the balance sheet of a limited company is one which is often treated by the company lawyer as highly artificial or even fictitious. Those who attend regularly in the Companies Court on Mondays during the sittings will not infrequently have heard counsel appearing on reduction petitions explaining that the goodwill figure is of course merely a guess, and that it is not possible to arrive at any accurate valuation. The most surprising thing is the widely different results which are produced by these guesses, even when allowance is made for the obvious practical difficulties with which directors and their advisers are faced in arriving at a conclusion. A company with a relatively small paid up capital and a record of financial disappointments and failures may well have in its balance sheet a large figure representing goodwill, even though it is clear that a purchaser of the business would not be prepared to give a tenth of that figure for the goodwill. The item then is treated as one which is unrepresented by available assets, and when the time comes for reorganising the capital of the company it will probably be written off in whole or in part. This is no doubt reasonable, but the artificial nature of the item becomes impressed on an observer when he finds that large and prosperous companies often value their goodwill at £1 or some other purely nominal sum, thus, it would appear, giving up the unequal struggle to arrive at a reasonable valuation. On the other hand, goodwill is, of course a real and valuable asset, and in many concerns, such as small local retail businesses, it may even be one of the largest and most important items on the assets side of the balance sheet. It is, therefore, useful to attempt an inquiry into its nature and to look at some of the practical problems to which it gives rise.

Goodwill has been described as "a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start . . ." per Lord Macnaghten in *Inland Revenue Commissioners* v. *Muller Limited* [1901] A.C. 217. Lord Macnaghten's attempted definition only illustrates the difficulty to which he is careful to refer. A new business at its first start may well have a good name and reputation, whereas an old-established business with both those advantages may well have no goodwill from what I may call the balance sheet point of view. In other words it may be earning enough to pay its way and distribute a reasonable dividend on its capital, but unless it has prospects of increased earnings over and above these it can accurately (so far as accuracy comes into a discussion of this question) be said to have no goodwill. An accountant would, I think, subscribe to this proposition. Some part no doubt of earnings must be attributed to goodwill to the exclusion of the fixed and other assets, but it does not necessarily follow—and I venture to say that it in fact rarely follows—that the figure at which goodwill stands in the balance sheet is any indication of the proportion of earnings attributable to the goodwill.

Now although, as I have said, one often hears it stated that the value of the goodwill of a company has merely been guessed at by the directors, nevertheless, various methods can be and are resorted to in order to arrive at a more scientific result. This is not the place to go into the relative merits of these various systems, nor is it the lawyer's province, but an elementary knowledge of such matters is of the greatest value to anyone who is consulted in any way with regard to a balance sheet or with regard to the sale of a business; and I propose, therefore, to digress slightly on the topic of valuation. The first thing to remember is that past profits are only material as a factor in producing a reliable estimate of future profits. The value of goodwill, just like the value of shares, depends on estimates of future profits, though it may well be that a sound way of arriving at such an estimate is by taking the average of a number of years' past profits. Having decided what future profits are likely to be, it is necessary to decide what is a reasonable return to expect from capital invested in a business of the nature of that with which one is concerned. It is then possible to value the business as a whole by dividing one hundred times the expected profit by the hoped-for return. The goodwill will then consist of so much of this last figure as is not ascribable to tangible assets. It is submitted that this method is very much more reliable than the equally common method of taking a given number of years' purchase of profits. The number of years to be chosen becomes of great importance and the choice of different "experts" are bound to vary. Moreover, this system ignores the capitalisation of the company (which is a matter of no little importance) and produces the same results for two companies which, though similar in other respects, have completely different capitals. A variant of the system is to take so many years' purchase of what are called "super-profits"—i.e., the probable excess of profits over a figure representing a reasonable return on the capital value of the tangible assets—but this remains open to the same objections as to the choice of the number of years. Other systems exist and are resorted to by accountants, but they need not detain us here. Enough will have been said to show that the calculation of the value of goodwill need not be a mere matter of guesswork, though some of my readers may be pardoned for imagining that guesswork will do just as well.

Goodwill, of course, makes its first appearance in the first balance sheet of the company and appears there as one of the components of a business bought by the company. It is to be observed that when a business is sold to a company as a going concern the goodwill of that business will usually have a higher value ascribed to it than would have been the case if the business had been sold to an individual or individuals. The reason for the distinction is that on a sale to private persons the purchasers usually propose to devote at least a fair proportion of their time and energies to the conduct of the business in return for which they naturally expect to get something in the nature of salaries in addition to dividends earned on their invested capital. On a sale to a company, however, this is not the case, as the members of the company will be content with their dividend rights and expectations and will not be concerned in the running of the company's affairs. The result is that in a company's balance sheet goodwill is often over-valued in the sense that it stands at a figure greater than that which any subsequent purchaser could be expected to give for it. In any case, whatever the figure may be, it must be stated in the balance sheet as a separate item, for s. 124 (2) of the Companies Act, 1929, provides that: "There shall be stated under separate headings in the balance sheet, so far as they are not written off . . . (*c*) if it is shown as a separate item or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents or trade marks as so shown or ascertained." On the construction of the sub-section it might be argued that goodwill, patents and trade marks could, when they all exist, be included under a single heading, but this is by no means clear, and it is always preferable to separate the goodwill from any patents and trade marks which the company may own when this is in practice found possible. The figure of goodwill is usually a constant one, and it is in fact best left alone until it becomes necessary to write it down or write it off as part of a scheme for the reduction of the company's capital. There is, however,

no objection in law to writing off goodwill from time to time, though there is a wide divergence of opinion as to how this should be done—i.e., whether it should be written down out of profits or out of capital. Again, so far as the law is concerned and apart from special provisions in any particular case, there is no objection to writing off goodwill out of either: see *Wilmer* v. *McNamara & Co., Ltd.* [1895] 2 Ch. 245; *Stapley* v. *Read Bros., Ltd.*, 40 T.L.R. 442, and the expediency or desirability of any particular method is a matter about which accountants may (and do) differ. I think, however, it is true to say that they find themselves in agreement on the subject of writing up goodwill, a proceeding which is universally condemned as commercially unsound. And, indeed, it is not difficult to appreciate this view since writing up goodwill amounts to taking credit for a profit which has not yet been realised and which, moreover, is not likely to be realised at any time in the near future.

A Conveyancer's Diary.

Gifts to Institutions for particular purpose not being Charitable.

THE recent case of *Re Turkington, Owen* v. *Benson* (1937), 81 SOL. J. 1041, directs attention to the validity or otherwise of gifts to institutions which are not charitable. By his will, a testator gave his residuary estate to a named Masonic lodge "as a fund to build a suitable Temple in Stafford."

The validity of the gift was questioned on the ground that the lodge was constituted a trustee for the purpose of building a temple and such purpose was not charitable and consequently the gift was invalid as tending to create a perpetuity.

If the gift had been to the lodge *simpliciter* without naming any particular purpose it would, no doubt, have been good, as will be seen from the authorities to which I will refer, so the main question was whether any trust was created.

There are two cases which were relied upon by Luxmore, J., in his judgment, the first being rather curious reading in these days.

In *Re Selous, Thomas* v. *Selous* [1901] 1 Ch. 921, the facts were that a testator, who died in 1890, bequeathed a leasehold messuage to a trustee in trust for two of his daughters, in equal shares as tenants in common. By an indenture, dated in 1895 and made between the trustee of the one part and the two daughters of the other part, after reciting the above-mentioned bequest and that the daughters had requested the trustee to execute such assignment to them of the said messuage as was thereinafter contained, it was witnessed that the trustee at the request and by the direction of the daughters assigned the messuage to the daughters to hold the same unto the daughters as joint tenants for the residue of the lease, the daughters entering into a joint covenant with the trustee to pay the rent and perform the covenants of the lease and to indemnify the trustee against the same.

One of the daughters having died, the question arose whether the survivor was entitled to the lease or whether an undivided share belonged in equity to the estate of the deceased daughter. It was contended for the executors of the deceased daughter that the equitable estate in common was not merged in the legal estate as joint tenants created by the assignment.

Farwell, J., held that the assignment created a joint tenancy both at law and in equity. His lordship said, in the course of his judgment: "The rule in *Selby* v. *Alston* (1797), 3 Ves. 339, namely, that where equitable and legal estates, equal and co-extensive, unite in the same person, the former merges, or, in other words, that a person cannot be trustee for himself, applies to a case where such estates unite in two or more persons. The only doubt I felt was whether the advantage of a tenancy in common over a joint tenancy raised any presumption against merger. But the difference in interest between these two estates is so small and shadowy that I do not think it would be sufficient to raise that presumption." The last sentence which I have quoted is interesting in view of the provisions of the Law of Property Act, 1925, in consequence of which of course it is common enough for persons to hold as joint tenants in trust for themselves as tenants in common. But that is statutory. It does, however, seem strange that before 1926 the difference between a tenancy in common and a joint tenancy was considered to be "small and shadowy."

The other case is *Re Clarke; Clarke* v. *Clarke* [1901] 2 Ch. 110.

In that case there was a bequest "to the Committee for the time being of the Corps of Commissionaires in London to aid in the purchase of their barracks or in any other way beneficial to that corps."

It was contended that the committee of the corps held upon trust for the purpose of erecting barracks, and that the object, not being charitable, the gift was invalid. Byrne, J., in deciding that the gift was good, went exhaustively into the earlier authorities and summed up the position as follows: "The form of the gift here is 'to the Committee for the time being of the Corps of Commissionaires to aid in the purchase of their barracks.' Now it is true enough that 'to aid in the purchase of their barracks' rather points to something that is to last for a considerable time. I do not think that I need go into the question of whether the fund for the erection of the barracks is, in fact, itself a charitable fund or not. I think there is considerable room for argument; but it does seem to me that all the members of a society constituted as this one is could, if they so pleased, and unless the building of the barracks be a charity, deal with the funds intended for building or with the buildings just as they please. If it is a charity, they could not deal with them as they please, but then the gift is perfectly good. If it is not a charity, they could deal with them as they please because there is nothing to prevent all the members of the association joining together to dispose of the funds or of the barracks."

To return to *Re Turkington*. Luxmoore, J., decided that the gift was valid. His lordship said: "If it had been a gift to the Lodge without anything further its validity could not have been questioned, but it has been argued that the words 'as a fund to build a suitable temple in Stafford' constituted a binding trust. The whole question is whether they did so, or whether they are simply an indication by the testator of the purposes for which he would like the money to be expended without imposing any trust upon the beneficiaries. The gift is to the Lodge, which means the members for the time being. No separate trustee of the fund is constituted. The beneficial interest is in the persons who are said to be trustees, and in those circumstances the equitable interest merges in the legal interest." The learned judge added that the members of the Lodge were at liberty to deal with the property in accordance with their constitution in any way they thought fit, and so the gift was not void as tending to create a perpetuity.

COUNTY COURT CALENDAR FOR JANUARY, 1938.

The following are the dates of sittings at Kingston County Court during January, which arrived too late for inclusion in the Calendar in last week's issue:—

Circuit 45—Surrey.
His Hon. Judge HAYDON, K.C.
His Hon. Judge HURST (Add.).
*Kingston 7 (R.), 11, 14, 18, 21 (R.), 25, 28.

* = Bankruptcy Court.
(R.) = Registrar's Court only.

Since publishing the Calendar we have received notice that His Hon. Judge FRANKLAND will not sit at Huddersfield County Court (Circuit 12) on 4th January.

Landlord and Tenant Notebook.

Essentials of Surrender by Operation of Law.

At common law, a lease could be surrendered without formalities; the Statute of Frauds (29 Ch. 2, c. 3) enacted that no lease or term of years should be surrendered, unless it be by deed or note in writing, "or by act and operation of law." In L.P.A., 1927, s. 53 (1) (*a*), which replaces the older enactment, the words "act and" are omitted from the expression; and much could be said for the proposition that operation of facts would be a better phrase than operation of law, for inference from conduct is the basis of the alternative to documentary evidence (which must now be by deed: R.P.A., 1845, s. 3, replaced by L.P.A., 1925, s. 52 (1): the saving in sub-s. (2) speaks of "(*c*) surrenders by operation of law, including surrenders which may, by law, be effected without writing").

A good starting point for a study of the essentials of surrender by operation of law is the case of *Thomas* v. *Cook* (1818), 2 B. & Ald. 119 (or, *Thomas* v. *Cooke*, 2 Sta. 408). The action was for use and occupation. The defendant had originally held (and was alleged still to hold) of the plaintiff as tenant from year to year. In 1816 the defendant sublet to P, who entered at Christmas. At Ladyday, 1817, the defendant owed the plaintiff rent, and P owed the defendant rent. The defendant distrained. P offered him a bill. He refused it. The plaintiff then told him not to pay the defendant but to pay him, and agreed to take the bill. At Michaelmas the plaintiff distrained on P's goods. The question whether the plaintiff had accepted P as tenant with the defendant's assent was left to the jury, who found for the defendant. On a motion for a new trial it was said by Bayley, J., that the jury were entitled to consider the fact that the replacement of the defendant as a tenant by P was to the plaintiff's advantage, and held that there had been a surrender by operation of law. The reasoning ascribed to Bayley, J., is so ascribed to him by Parke, B., in *Lyon* v. *Reed*, *infra*; it does not appear in either of the reports of the case cited.

The decision has been much criticised. In Smith's "Landlord and Tenant," a standard text-book of the last century, its authority was questioned. The book, printed after the author's death, recorded lectures delivered at the Law Institution; and in his Eighth Lecture, after dealing with the ordinary case of the acceptance of a new lease by a tenant, the lecturer commented on the struggle to extend the doctrine to cases in which a third party took a new lease. Most remarkable among the cases in point, he said, was *Thomas* v. *Cook*, in which three circumstances alone—the incompatible grant of a new lease by the landlord, the tenant's consent, and the delivery of possession to the new lessee—had been considered sufficient; the lecturer doubted whether such a result could have been obtained if the first lease had been by deed, and strongly recommended his students not to assume that the doctrine would be extended by the courts a whit beyond the limits of the cases already decided, for it was an encroachment upon the Statute of Frauds.

For judicial criticism in existence at the date of Mr. Smith's lectures (1841–1842) one can best turn to *Johnstone* v. *Hudleston* (1825), 4 B. & C. 922, a replevin action. The relevant facts are not all of them too clear. The plaintiff, a yearly tenant, purported to give the defendant notice to quit, on the 19th December, for the 25th March following. Apparently the notice was given verbally; but while the headnote says that the defendant accepted and assented to the notice, one judgment makes much of the fact that the assent was not notified to the plaintiff. The replication with which the pleadings closed alleged that the plaintiff had "accepted and recognised and assented to and adopted the notice to quit." On a demurrer, *Thomas* v. *Cook* was invoked. But Bayley, J., said "in that case there was not only a declaration by the original landlord that he would not longer consider Cook as his tenant, but there was an acceptance by him of another person as his tenant, and that acceptance was assented to by Cook. . . . Both the landlord and the tenant were willing; possession had already been transferred. . . . Here the tenant remains in possession, and no act is done by the landlord to show that he considered the old tenancy to be about to end. It is said that the landlord adopted the notice to quit . . . it ought to be shown that notice of that assent was given to the tenant . . . till the tenant was notified, the notice to quit was a mere proposal." Holroyd, J., contented himself with distinguishing *Thomas* v. *Cook* by reference to the fact that in the case before him there was no yielding up to the landlord or to anyone else of possession.

The next case which can be usefully cited in dealing with the controversy chronologically, would be *Lyon* v. *Reed* (1844), 13 M. & W. 285; but from the point of view of convenience, reference should be made first to *Nickells* v. *Atherstone* (1847), 10 Q.B. 944, and to *Davison* v. *Gent* (1857), 1 H. & N. 744. The defendant in the former had moved to Scotland and begged the landlord to take the rooms let to him off his hands; after a time the landlord let them to someone else, who became insolvent, whereupon the action was brought for rent. Denman, C.J., in his judgment, examined the position of the three parties concerned: the landlord, who could not dispose of the estate granted to the new tenant unless the old tenancy were surrendered; the new tenant, who could not accept it without such surrender; and the old tenant, who was an active party by giving up possession and by consenting. These facts, he held, effected a surrender by operation of law. Likewise, in *Davison* v. *Gent*, it was held that a tenant giving up possession in order to enable a different occupier to take a lease had surrendered his own—and in this case the old lease was by deed, which was handed back.

Lyon v. *Reed* (1844), 13 M. & W. 285, should be mentioned because of the attitude taken by Parke, B., towards the element of intention. It was held, in an action for nineteen years' rent, that the plaintiffs, who claimed as mesne lessors, could not prove a surrender by former holders of a head lease which should still be running merely by producing a deed expressing an agreement; *Thomas* v. *Cook* could not be applied to reversionary interests. The learned baron said: "Surrender by operation of law is applied to cases where the owner of a particular estate has been a party to some act, the validity of which he is by law afterwards estopped from disputing, which would not be valid if his particular estate had continued to exist"; this might be the grant of a new lease to the same lessee; and no question of intention arose, for the effect might be produced in spite of intention. But some "act of notoriety" was a necessary ingredient; acceptance of a lease would do, but not mere oral consent to a grant to someone else.

In *Phené* v. *Popplewell* (1862), 12 C.B. (N.S.) 334, which decided that a key left with a landlord constituted a continuing offer to surrender, there was no third party; but I think the judgments contributed towards the solution of the difficulties mentioned in "Smith's Landlord and Tenant." Earle, C.J., said that anything which amounted to an agreement on the part of the tenant to abandon, and of the landlord to resume, possession amounted to a surrender by operation of law; Willes, J., said that the intention of the parties is to be made out by the circumstances; and Byles, J., described the essentials as "the will of the landlord and of the tenant and its expression."

The latest reference to *Thomas* v. *Cook*, is in *Wallis* v. *Hands* [1893] 2 Ch. 75, in which it appeared that a forty-five-year mining lease had been granted to certain persons in 1884; they worked the property for some three years, when their finances became exhausted, and the plaintiff then came upon the scene. He did not take an assignment, but accepted

a forty-two-year lease from the lessor. He borrowed, for perusal, the 1884 lease, but returned it. The 1884 lessees' solicitor, with his clients' authority, verbally assented to the grant of the 1887 lease. The plaintiff never took possession. The 1884 lessees subsequently, in 1888, assigned their lease to one of the defendants in the action.

In these circumstances, Chitty, J., was called upon to examine the controversy. His lordship held that the authorities did not conflict. The foundation of the doctrine was estoppel, but this estoppel, estoppel by act *in pais*, required an act of notoriety. Oral assent without change of possession was not enough.

This, I think, represents the *ratio decidendi*. In an earlier passage, Chitty, J., cited part of the judgment in *Davison* v. *Gent, supra*: " where a lessee assents to a lease being granted to another, and gives up possession to the new lessee, that is a surrender by operation of law " and approved the proposition " there is no surrender by operation of law, unless the old tenant gives up possession to the new tenant at or about the time of the grant of the new lease to which he assents," but it is perhaps not right to imply that such change of possession is, in any circumstances whatever, the only act of notoriety which will satisfy the requirements. It has been pointed out that even less notoriety attends the grant of a new lease to the tenant himself! Therefore, I do not think it safe for practitioners to assume that the doctrine would not apply in, say, a case like this: A grants B a thirty-year lease. B enters, but after three years' occupation underlets to C for seven years. During the seventh year of the underlease, B decides to emigrate to some distant country. He introduces D to A, D being a person anxious to occupy the property on the termination of the underlease, and prepared to take a five years' term immediately. A seeing that there may be little prospect of recovering rent from B, grants the suggested lease to D, who pays rent thereunder. Can it be said that the requisites of estoppel are not satisfied, and that A's lease has not been surrendered by operation of law?

Our County Court Letter.

THE REMUNERATION OF THRESHERS.

In a recent case at Cambridge County Court (*Deamer* v. *Backhouse*) the claim was for £31 8s. 9d. and the counter-claim was for £74 6s. 6d. The plaintiff was a machinist and steam-ploughing contractor and owned nine sets of threshing tackle. His case was that in February, 1935, he had agreed to do the defendant's chaff-cutting for 55s. a day, and in August the plaintiff had done 3¼ days' threshing of peas and beans, and in September eight days. The agricultural practice was to send the tackle round to different farmers to start their threshing, and the straw was used to thatch the stacks already done and also those waiting. There was no custom to return within fourteen days, and the plaintiff had never promised to do so. On returning in November, however, to thresh wheat he found another contractor's machine on the defendant's farm. In January, 1936, the plaintiff received a cheque for £5, but no complaint was made prior to the action, although the plaintiff rendered an account several times. Corroborative evidence was given that the custom was to start the threshing at different farms and to return and complete it by rotation over periods up to two months. The defendant's case was that he believed in new methods, and therefore stipulated that all his threshing should be done in fourteen days. The agreed price was 50s. a day. Owing to the plaintiff's delay in returning, it was necessary to cover the stacks with tarpaulins. Nevertheless the two top layers were wet in November, when another threshing contractor was engaged to finish the work. In October, 1935, the market price of wheat was 28s. a quarter, but it fell in November to 25s. and 24s. and some of the defendant's wheat was damp and had to be re-conditioned. His Honour Judge Lawson Campbell held that the plaintiff had not agreed to return within fourteen days, and the counter-claim therefore failed. The agreed price, however, was 50s. a day, and judgment was accordingly given for the plaintiff for £28 12s. 6d. with costs.

AUCTIONEER'S RIGHT OF RE-SALE.

In a recent case at Gloucester County Court (*Moore & Sons* v. *Sabbatella; Smith, third party*) the claim was for £45 10s. as damages for breach of contract. The plaintiffs were auctioneers, and had sold to the defendant by auction, *inter alia*, a striking bracket clock, 160 years old, for £70. The goods were not removed and paid for, as arranged, and the plaintiffs, after due notice, resold the clock for £30. The loss on the other articles was £15, and the amount claimed was therefore the balance of the defendant's bid. Although there was no obligation to minimise the defendant's loss, the prices obtained on the re-sale were the best possible. The clock was a 1770 piece, but the striking mechanism had gone and new working parts fitted. It had no value to collectors and was a mere furnishing clock. The defendant's case was that he was only acting on behalf of the third party, who was an antique dealer elsewhere, and had instructed the defendant to bid up to £75 for the clock. Apparently the third party had subsequently heard something to the detriment of the clock, as the necessary amount had not been remitted. A better price might have been made on re-sale. His Honour Judge Kennedy, K.C., observed that, although the plaintiffs had made no special effort on the re-sale, they had not obtained a bad price for the clock. Judgment was given for the plaintiffs against the defendant, and an order to indemnify the defendant, with costs, was made against the third party.

Books Received.

The Factories Act, 1937. By Leslie Maddock, M.A., B.C.L., of the Inner Temple and the Midland Circuit, Barrister-at-Law, and Sir Gerald Bellhouse, C.B.E., late H.M. Chief Inspector of Factories. 1937. Royal 8vo. pp. xxviii and (with Index) 684. London: Eyre & Spottiswoode. 25s. net.

Prejudicial Assumptions in Poison Cases. By Alice Raven, of Lincoln's Inn and the Middle Temple, Barrister-at-Law. 1937. London: Westhope & Co. Price 6d.

The Law as to Sewerage and Drainage. By Wm. Marshall Freeman, of the Middle Temple, Barrister-at-Law, Recorder of Stamford. 1937. Demy 8vo. pp. xxiv and (with Index) 264. London, Liverpool, Glasgow and Birmingham: The Solicitors' Law Stationery Society, Ltd. 17s. 6d. net.

The Matrimonial Causes Act, 1937. Supplement dealing with the Matrimonial Causes Rules, 1937. By S. Seuffert, of the Middle Temple, Barrister-at-Law. 1937. Demy 8vo. pp. 15. London, Liverpool and Birmingham: The Solicitors' Law Stationery Society, Ltd. 1s. 6d. net.

Our Pre-War Foreign Policy. By Ellis W. Davies. 1937. Caernarvon: Ellis W. Davies, 9, Segontium Terrace. Price 6d.

Standard Practice in Auditing. By W. J. Back, Incorporated Accountant. 1937. Crown 4to. pp. vi and (with Index) 44. London: The Society of Incorporated Accountants and Auditors. Price 2s. 6d.

Hints for Young Solicitors and Articled Clerks. By Sir Roger B. Gregory, Past President of The Law Society, and M. F. Tweedie, Solicitor. Revised by L. J. D. Bunker, LL.B., Solicitor. 1938. Demy 8vo. pp. vii and 56. London: Butterworth & Co. (Publishers), Ltd. 2s. 6d. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Repair of Culverts.

Q. 3527. A rural district council some ten or fifteen years ago cleaned out a stream running alongside a country lane and also cut the long grass on both banks of the stream. The grass on the bank on the opposite side from the lane had always been cut by the landowner in former years. The council's workmen told the owner that she would not have to do any cutting in future, as the responsibility for the cleansing, etc., of the stream rested with the rural district council, who would do the grass cutting on both sides in future and they have actually done the work to date. There are one or two brick bridges culverting the stream and giving access to the adjoining landowner's land from the lane. One of these needs repair, and the question arises, who is responsible for the repairs. Neither the rural district council nor the landowner has been able to find any information as to who originally built the culverts over the stream, which are probably at least ninety years old. The rural district council say they do not see that the responsibility rests with them, and I shall be glad to have your opinion as to whether they are correct, in view of the fact that they have assumed responsibility for the stream, as stated above.

A. It is a question of fact whether the ways over the culverts are highways repairable by the inhabitants at large. The evidence appears to be against this view, and the rural district council are therefore not liable for repairing the culverts: see *Attorney-General* v. *Hornsey Borough Council* (1926), 43 T.L.R. 92, and the case there quoted (at p. 94) of *Rex* v. *Inhabitants of Whitney*.

Notice of Increase of Rent.

Q. 3528. A landlord being entitled to increase the rent of a controlled house, on account of carrying out certain improvements, served a week's notice in the proper form of his intention to increase the rent. Apparently the Acts require four clear weeks' notice where such increase is on account of improvements. We shall be obliged if you will inform us whether the notice is invalid, or whether it can take effect at the expiration of four weeks from its date.

A. The notice was invalid, and the defect cannot be cured by waiting the requisite period of four weeks before raising the rent. A fresh notice must be served in proper form.

House Repairers as Workmen.

Q. 3529. X, a widow, is the owner of five leasehold dwelling-houses all of which she has converted into residential flats—each house has three flats. In order to maintain them in a proper state of repair, X employs workmen to repair the roofs, paint the exterior and paint and decorate the interior from time to time as may be necessary. Sometimes the job is contracted for at an inclusive price and sometimes the price is not fixed beforehand but is afterwards calculated on the time expended and materials supplied by the workmen. Usually X directly employs not more than two or three workmen who bring their own assistants if they like. X has purchased these properties for investment and lives on the net income. She is not in any sense a property dealer. Under the circumstances, is it necessary or advisable for X to insure against her liability (if any) for workmen's compensation under the Workmen's Compensation Act, 1925, or any other statute or at common law?

A. On the question of fact, the house repairers would probably be held to be "workmen" within the Workmen's Compensation Acts, and not independent contractors. X should, therefore, insure against her liability under the above Acts, and also under the Employers' Liability Act, and at common law.

Right to Mortgage—Deed.

Q. 3530. In 1922 A mortgages his property to B Limited. In 1925 A, as vendor, and B Limited, as mortgagees, convey to C in the following manner: "And the mortgagees according to their estate and by the direction of the vendor and as mortgagees hereby convey and release and the vendor as beneficial owner hereby conveys and confirms unto the purchaser All that, etc. To hold unto and to the use of the purchaser in fee simple (subject to certain restrictive covenants) but discharged from all principal money and interest secured by and all claims under the mortgage." There is contained in the conveyance an acknowledgment by the mortgagees of the right of the purchaser to production and delivery of copies of the mortgage, which was retained in the custody of the mortgagees. On acting for a subsequent purchaser, under the National Conditions of Sale, 13th ed., we enquired why the mortgage was not handed over, and are informed that there was still money owing to the mortgagees. Are we not entitled to have this mortgage handed over to us (which relates solely to the property in question) with the title deeds on completion?

A. It is not stated what were the recitals in the conveyance to C showing the right of B Limited to retain the mortgage. If, as stated, the mortgage related only to the property conveyed, then the opinion is given that the mortgagee is bound, if the mortgage is entirely discharged, to hand it over to the legal owner of the property unless he can show some good ground for its retention. This appears to be the effect of *Clayton* v. *Clayton* [1930] 2 Ch. 12, and *Lewis* v. *Plunkett* [1937] Ch. 306. Of course, if B Limited released the property without full payment, it could claim to retain the mortgage by virtue of its containing a covenant by A under which the company could claim the balance of the mortgage money and interest. If and when that liability is discharged it would seem the purchaser is entitled to the deed.

Service of Notice to Quit.

Q. 3531. We act for the landlord of a cottage let on a yearly tenancy from Lady Day. On the 27th September, last, we sent by registered post a notice addressed to the tenant to quit the cottage at Lady Day, next. On the 1st October the letter was returned by the Post Office marked "Refused," and, presumably, unopened by the tenant. Has notice to quit been effectively served upon the tenant? Should any further step be taken by the landlord?

A. The presumption is that the notice was duly served. The presumption may be rebutted by the tenant, but, in the present case the tenant will, apparently, have to admit, in cross-examination, that he or his agent refused the registered letter. This will establish service, as it is immaterial that the tenant did not open the letter or read the notice: see *Papillon* v. *Brunton* (1860), 5 H. & N. 518, and *Gresham House Estate Co.* v. *Rossa Grande Mining Co.* [1870] W.N 119.

To-day and Yesterday

LEGAL CALENDAR.

27 DECEMBER.—On the 27th December, 1933, Sir Henry Fielding Dickens, K.C., for fifteen years Common Serjeant, the sixth child of Charles Dickens, died.

28 DECEMBER.—On the 28th December, 1852, Lord Cranworth received the Great Seal as Chancellor in Lord Aberdeen's administration, being promoted from the Chancery Court of Appeal to the Woolsack, where he remained for five years. It was written of him that he had "a clear head, vivacity, information, an extraordinary pleasantness of manner without being soft or affected, extreme good humour, cheerfulness and tact." He died as a result of a heat wave in July, 1868.

29 DECEMBER.—A semi-comic case came to an end in the High Court at Edinburgh on the 29th December, 1914, when Lord Strathclyde ordered the release on probation of a seventeen-year-old girl convicted of forgery. It was in the early days of the war and heads had been turned by tales of German atrocities. Therefore, there was consternation in her family when she produced two letters purporting to relate with particularly gruesome details the killing of her sister, Grace, who was an army nurse. This sorrow was dispelled when a telegram arrived from Grace: "Reports untrue. Safe in Huddersfield." There she had been all the time. The prisoner in the witness box pleaded that she had worked herself into the belief that it was all true.

30 DECEMBER.—On the 30th December, 1896, there ended the trial at Sofia of three men accused of the murder of Stambulov, but lately dictator of Bulgaria. In difficult years, when the destinies of his country were torn between Russia and Turkey, his policy had tended away from the former. During that time the necessary sternness of his measures had made him many enemies. His downfall was brought about by the intrigues of Prince Ferdinand of Bulgaria anxious to conciliate the Tsar. Not long after he lost power he was murdered in the streets, a fate which he had explicitly foretold. There was a dramatic scene at the trial when his widow declared that the accused should be released, declaring his successors in the Government to be the true criminals. The two men found guilty were sentenced to three years' imprisonment.

31 DECEMBER.—On the 31st December, 1818, a dreadful scene occurred at Edinburgh during the execution of a man condemned for robbery. Owing to a miscalculation in the length of the rope, his toes rested on the planks beneath the drop after it had fallen. The mob grew restive. The magistrates and their attendants had to retreat before the shower of stones. The body was cut down (whether the man was dead or still alive is uncertain), and carried off towards the Lawnmarket. Eventually, the military had to be called from the Castle to quell the riot.

1 JANUARY.—Did you know that in the good old days of imprisonment for debt peers of the realm were exempt? The point came up on the 1st January, 1849, when a certain noble earl, having just succeeded to a peerage on the death of his father, applied to Mr. Baron Platt in chambers for release from the Queen's Bench Prison. One of his creditors made a valiant attempt to keep hold of him, arguing that a peer was not privileged till he had taken his seat in the House of Lords, but he failed to establish this.

2 JANUARY.—On the 2nd January, 1803, Sir Richard Perryn, formerly a Baron of the Exchequer, died at his Twickenham home in his eightieth year, three years after his retirement from the Bench. Contemporary opinion allowed him no more than competent legal knowledge, but it was agreed that he was "a humane, upright and good man, and in his private capacity very much the gentleman and man of fashion."

THE WEEK'S PERSONALITY.

The Old Bailey still misses Sir Henry Dickens, who for fifteen years was Common Serjeant of the City of London, though all the time those who knew him were acutely conscious that he was made for better things and wondered at the strange injustice which kept him from the High Court bench. Still, it was appropriate enough that a son of Charles Dickens should sit in judgment in those courts where Sydney Carton and Stryver had practised and Charles Darnay had stood his trial, that he should weigh the guilt of the prisoners of Newgate where Barnaby Rudge and Hugh were confined and judged. He had many stories to tell of incidents at the Bar which arose out of his descent. Once in arguing a case he quoted a passage from one of his father's books, and immediately afterwards realised that he had misquoted it. The litigant opposed to his client was heard to remark: "Well, he don't seem to know much law, but he might at least quote his own father correctly." In fact, he knew immeasurably more law than his judicial post gave him scope to use. The tragic suddenness of his death, brought about by being knocked down by a motor-car near his Chelsea home, caused much sorrow.

NEW YEAR'S GREETINGS.

If Lord Hailsham's New Year presents do not amount to a round £3,000, it is one of his predecessors on the Woolsack whom he has to thank. The modern eye, of course, would be somewhat shocked if one of the annual sights of London were the arrival at No. 17 Bryanstone Square of a procession of ambitious counsel and aspiring court officials with monetary tributes for an expectant Chancellor. Lord Cowper, though not the first holder of the Great Seal to feel uncomfortable at such a proceeding, was the first to make a stand against it, instead of contenting himself like the great Lord Nottingham with murmuring, as the gifts were piled on his table: "Oh! Tyrant custom!" Such nice delicacy of feeling was not much appreciated in the cynical and cultured atmosphere of the eighteenth century, and Cowper had good grounds for the somewhat apprehensive tone of the entry in his diary: "New Year's gifts turned back and pray God it doth me more credit and good than hurt by making secret enemies."

EXCUSE FOR HONESTY.

When news of the gesture reached the chiefs of the King's Bench, Common Pleas and Exchequer, their wigs stood on end with horror at this unexpected threat to a much valued source of "outdoor relief" which they also enjoyed. So great was the consternation that the honest Lord Chancellor had to take refuge in a subterfuge, writing a letter to his father containing a version of his step for public consumption: "I had always resolved to refuse the counsels' New Year gifts as that which no Court or Judge in England or elsewhere received and, therefore, the day before sent word to all the counsel I could think likely to come to forbid it, but I sent to none of the officers . . . I had accordingly prepared a cold breakfast for the reception of the officers as usual, but finding several counsel came whom I had not thought of and that they would come thick on one another, I could not be at home to some and not to others and, therefore, to prevent disputing with the counsel I was denied to all." But though the refusal was thus put on the basis of mistake, the custom was never afterwards revived in Chancery.

Mr. Samuel Lithgow, C.B.E., J.P., solicitor, of Wimpole Street, W., and Thelverton Grange, Diss, left £62,776, with net personalty £47,160.

Land and Estate Topics.

By J. A. MORAN.

In spite of the Christmas holiday, the auctioneer's hammer was very busy, last month, both in London and the country, and there is evidence that January will witness a resumption of activity. Mr. Henry F. Cobb, at his sales at Burnley and Preston, realised nearly £25,000 for house property belonging to the London Midland & Scottish Railway, and, early in the year, public offers will be invited for nearly four acres at Kilburn, occupied by shops in the most valuable "multiple" trading position in the High Road, as well as residences, with large gardens, in the neighbouring Quex Road, Birchington Road and West End Lane. The ground rents receivable under the existing leases amount to £367 only, but the soundness of the security will be better appreciated when it is added that the rack rents reach the formidable total of £7,500 per annum. When this estate was built up, it was doubtless deemed satisfactory if the rack rents covered the ground rents about five times; but so consistent has been the rise in value during the last two decades that the annual value to-day covers the ground rents no fewer than twenty times. That property in this well-known area will further appreciate in value is to be reckoned with, and it should give the auctioneers—Messrs. Weatherall, Green & Smith—an opportunity to start the New Year programme on promising lines.

In his paper on "Practical Points in Arbitration," read before the members of the Chartered Surveyors' Institution, Sir Lynden Macassey, K.C., suggested that when the award was of a complicated character, an arbitrator, in his own interests, should have it drawn up by a solicitor and, if necessary, settled by counsel. That he is entitled to do. It is not necessary to adopt the formal and archaic phraseology in which, in the past, awards have been drawn. Any form of simple award will do as long as it clearly states the question, or questions, submitted to the arbitrator for decision, and his decisions upon them. To give his reasons might open the door to litigation.

At the annual dinner of the Auctioneers' & Estate Agents' Institute, the President, Mr. Herbert Alexander, paid a tribute to the services of Mr. E. H. Blake, who is about to retire after a long innings as general secretary. Among the events included in his service of 18½ years were the transfer of headquarters from Russell Square to the palatial building in Lincoln's Inn Fields, the establishment of the London Auction Mart, and the closing of the doors of the Institute to those who did not qualify by examination.

There is probably a diversity of opinion as to whether it is, and will continue to be, in the best interests of the country that agricultural estates should be broken up, but, however that may be, landowners have made up their minds to divest themselves of those portions of their estates which are not essential to their enjoyment as residential or hereditary owners. The average landowner has a decided leaning towards the safeguarding of the interests of his tenants, and if he must sell, he takes every precaution to ensure that the parting leaves no bitter memories behind it. When the estate is offered in lots, corresponding to the various holdings, every tenant has the opportunity of bidding for his holding with a view to purchasing it at its true value.

Proposals for the abolition of rent restriction in England and Wales are made in the majority Report of the Inter-departmental Committee of the Rent Restrictions Acts issued on Monday. No doubt, by now, all those who are interested have made a careful study of the recommendations which, of course, are not likely to satisfy everybody.

Mr. Mander, in a discussion on the Coal Bill in the House of Commons, said that in a village in his constituency there was a public-house called "The Crooked House"; if one went inside one could see marbles running up the table. But surely this sight would not be gifted to anyone who had not been long on the premises!

Notes of Cases.

Court of Appeal.

In re **Johnson & Johnson (Great Britain) Ltd.'s Patent.**

Greene, M.R., Romer and MacKinnon, L.JJ.
12th, 13th and 14th October and 26th November, 1937.

Patents and Designs — Revocation of Patent — Comptroller's Powers—Matters to be Considered—Patents and Designs Act, 1907 (7 Edw. VII, c. 29), ss. 11, 25, 26.

Appeal from a decision of Luxmoore, J.

The Assistant-Comptroller, on an application under s. 26 of the Patents and Designs Act, 1907, revoked a patent relating to improvements in waterproof fabrics on the ground that "the nature of the invention or the manner in which it was to be performed is not sufficiently and fairly described and ascertained in the complete specification" (see s. 11 (1) of the Patents and Designs Act, 1907). He also refused certain amendments to the specification. Luxmoore, J., affirmed this decision.

Romer, L.J., delivering the judgment of the court dismissing the patentees' appeal, said that under s. 26 (2) the Comptroller could not revoke a patent unless the circumstances "would have justified him in refusing to grant the patent had the proceedings been proceedings in an opposition to the grant of a patent." The only grounds on which the Comptroller could refuse to grant a patent were strictly defined in s. 11 (1). His lordship having considered the specification, further said that a practice appeared to prevail in the Comptroller's office in the case of opposition proceedings under s. 11 and of proceedings under s. 26 of taking into consideration matters which could only be considered in revocation proceedings under s. 25, e.g., want of utility, prior use or want of subject-matter. This conflicted with the express provisions of the Act, since these were not among the grounds specified in s. 11. The practice should be discontinued. *R.* v. *Comptroller-General of Patents; ex parte Muntz*, 38 T.L.R. 652, in no way justified the practice. His lordship further said that the question whether or not a specification disclosed a manner of manufacture was one for the Comptroller. The question whether, apart from prior publications and prior claims, such as were specifically dealt with in s. 11 (1) (*b*) (*bb*), the manner of manufacture was new was not one with which the Comptroller was concerned. A manner of manufacture alleged to be new was an invention within the meaning of the Act. The truth of the allegation could only be inquired into by the court on a petition for revocation or in an action for infringement. That did not mean that the Comptroller was bound to accept the allegation that the method of manufacture was new if it was apparent on the face of the specification that the allegation was unfounded. In construing the specification the Comptroller should have regard to the meaning attributed to its language by skilled persons. But if the specification so construed showed that the applicant was claiming a manner of manufacture which he alleged to be new and did not itself show that the allegation was unfounded, evidence directed to establishing want of subject-matter or of utility or prior user was not permissible. His lordship observed that in the present case the patentees had failed to describe sufficiently and fairly the nature of their invention and the manner in which it was to be performed. His lordship in considering the amendment of the specification which the patentees sought leave to make, said that s. 21 enabled a patentee to amend his specification by way of disclaimer, correction or explanation. By s. 21 (*b*): "No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before the amendment." A similar restriction applied to an amendment under the powers conferred by s. 26 (*In re Evens's Patent*,

49 R.P.C. 385). Under s. 11 no express powers of amendment were given and, though it was not desired to throw doubt on the Comptroller's power to allow amendments in opposition proceedings, such an implied power must be subject to the same restrictions as those imposed when the powers of amendment were expressly given. His lordship said that the proposed amendment was inadmissible.

COUNSEL: *Sir Stafford Cripps*, K.C., and *Heald*, K.C.; *Moritz*, K.C., and *Marlow*.

SOLICITORS: *R. G. Harrison & Son; Cedric H. Akaster*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts

Wilson *v.* Wright.

Greene, M.R., Romer and MacKinnon, L.JJ.
12th November, 1937.

CONTRACT—SALE OF GOODS—POTATOES—SHIPMENT—"FOR SATURDAY'S STEAMER . . . F.O.B."—DELIVERY ALONGSIDE—NO ROOM ON SHIP—DELAY—WHETHER PRICE PAYABLE.

Appeal from Cardiff County Court.

On Monday, the 27th April, 1936, the plaintiff, trading in Northern Ireland, offered by telegram to sell the defendant, trading in Newport, Mon., a number of tons of potatoes at a certain price "for Saturday's steamer . . .f.o.b. Belfast." The defendant accepted "for shipment by the next steamer . . . f.o.b." The next steamer from Belfast to Newport was Saturday's. The goods were duly delivered alongside, but there was no room for them in the ship, and they were not shipped till the following Tuesday. The defendant, alleging that the price had fallen before they were delivered, refused to accept them at the contract price which the plaintiff in this action sought to recover, contending that he had performed his part of the contract and that under an f.o.b. contract it was the buyer's duty to see that there was room in the ship.

MACKINNON, L.J., delivering the judgment of the court, allowing the defendant's appeal, said that the question depended on the Sale of Goods Act, 1893, s. 11 (1) (*b*), and that the words amounted to stipulation that the goods should be shipped by the next steamer. On the construction of the contract it was a condition that they should be so shipped. His lordship referred to *Bowes* v. *Shand*, 2 App. Cas. 455, and *Alexander* v. *Vanderzee*, L.R. 7 C.P. 530, and said that the buyer was entitled to reject the goods.

COUNSEL: *Fortune; H. Holman*.

SOLICITORS: *Ingledew, Sons & Brown*, for *Moxon & Petty*, of Newport, Mon; *Kinch & Richardson*, for *Allen Pratt & Geldard*, of Cardiff.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Eaton *v.* George Wimpey & Co., Ltd.

Greene, M.R., Romer and MacKinnon, L.JJ.
3rd, 4th and 29th November, 1937.

WORKMEN'S COMPENSATION—INDUSTRIAL DISEASE—CONTRACTED IN ONE EMPLOYMENT—RECURRENCE IN ANOTHER—LIABILITY FOR COMPENSATION—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 43 (1) (*c*).

Appeal from Edmonton County Court.

In 1933, while employed by S, a workman contracted dermatitis through the use of cement, and this being certified under the Workmen's Compensation Acts he received periodical payments till June, 1935, when he compounded any further claim for £260. Thereafter he was more susceptible to the disease than before and to that extent did not completely recover. In May, 1936, he entered the employment of the appellant company, his work involving the handling of dry cement. On the 24th July, 1936, it was certified that he was disabled through dermatitis produced by dust or liquids since the 15th July. In August a medical referee confirmed this certificate. In a claim for compensation, His Honour Judge Beazley made an award against the company, which appealed on the ground that he was wrong in finding that the disease was contracted in their employment, and that he should have given effect to the evidence which he accepted that it was contracted in 1933.

MACKINNON, L.J., delivering the judgment of the court, said that s. 43 of the 1925 Act provided for the payment of compensation to a workman suffering from an industrial disease "due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement." The section did not say "caused by" or "contracted during" that employment. The relevance, if not the admissibility, of the evidence that the man contracted the disease in the employment of S could only arise if the company were seeking to take advantage of s. 43 (1) (*c*) (ii) or (iii), but that employment having ended more than twelve months before the 15th July, 1936, proviso (ii) could not apply, S could not be joined as a party, and accordingly cl. (*c*) was conclusive that compensation was recoverable from the appellant company as "the employers who last employed the workman during the said twelve months in the employment to the nature of which the disease was due." His lordship referred to *Blatchford* v. *Staddon and Founds* [1927] A.C. 461, and said that had the employment with S been within twelve months of the disablement the company could have handed over the burden. It was to be supposed that the legislature considered prudent employers sufficiently protected by s. 43 (*b*). The appellant company also contended that the accident did not happen in July, 1936, because it could be proved that he was disabled years before, but the Act did not permit this contention (s. 43 (1) (*a*) and (2)). His lordship referred to *Wilsons and Clyde Coal Co.* v. *Flynn* [1930] A.C. 516; . *Timmins* v. *Brodsworth Main Colliery Co.* [1934] 2 K.B. 361; *Durrant* v. *British Fibro Cement Works, Ltd.*, 27 B.W.C.C. 46; *Richards* v. *Gostrar* [1937] A.C. 304; *McNicholas* v. *West Leigh Colliery Co.*, 26 B.W.C.C., at p. 44, and said that the appeal should be dismissed.

COUNSEL: *H. Everett; Sellars*, K.C., and *S. Lincoln*.

SOLICITORS: *James Turner & Son; Durnford, Son & Bartle*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Gale (trading as Gale & Son) *v.* New.

Greene, M.R., Romer and MacKinnon, L.JJ.
30th November, 1937.

CONTRACT—ARTILLERY RANGE—UNDERTAKING TO COLLECT REMAINS OF SHELLS—PROPERTY PASSING TO CONTRACTOR—DUMP—TIME OF VESTING IN CONTRACTOR.

Appeal from Salisbury County Court.

By a contract consisting of a tender accepted by the War Office the plaintiff undertook "to collect during the currency of this contract the remains of exploded projectiles . . . lying on or about the artillery ranges at Salisbury Plain, Wiltshire, in accordance with the annexed conditions by which we agree to abide, and in consideration of our being allowed to retain as our property all such remains, including metals collected therefrom, to pay annually the sum of" £26 5s. The conditions by cl. 1 provided that the contractor should collect the remains and should so far as possible keep the ranges clear of such remains from time to time as opportunity afforded throughout the year. It also provided that the remains "when collected by the contractor shall become his property." By cl. 4 he was not to "disturb any unexploded projectiles" and was to report where he had found them. By cl. 6 every man employed by him had to sign an agreement to respect cl. 4. By cl. 7 the troops were to be "forbidden to collect the old metal." By cl. 11 the contractor was not

to collect metal on the ranges while practice was going on and was to obey the orders in that matter of the Commandant of the School of Artillery. The currency of the agreement was from June, 1935, to June, 1936. At the end of this term the plaintiff had collected a dump of over 20 tons, which stood on War Office land near the Salisbury-Devizes road. The defendant succeeded him and obtained a similar contract for the period from June, 1936, to June, 1937. He then sold the dump collected by the plaintiff. In an action in respect of the alleged conversion, His Honour Judge Cave, K.C., awarded the plaintiff £50 damages.

GREENE, M.R., allowing the defendant's appeal, said that the plaintiff had argued that he had collected the metal within the meaning of cl. 1. His lordship could not take that view. The object of the contract was to clear the ranges, and a contractor who collected metal into a dump and left it on the ranges could not be said to have cleared them. The forming of the dump did not carry out the obligation. To hold that the property in the metal passed to the contractor although he had not kept the ranges clear would defeat the meaning of the contract. The word "collect" covered not only the collection into dumps but also the removal of the dumped metal. The completion of the process of collection was not reached till the metal was removed from the ranges. Then, and not before, the property vested in the contractor.

ROMER and MACKINNON, L.JJ., agreed.

COUNSEL: *White*, K.C., and *John Henderson*; *Trapnell*, K.C., *A. Armstrong* and *B. Harwood*.

SOLICITORS: *Pennington & Son*, for *Lemon & Humphreys*, of Swindon; *Cunliffe, Blake & Mossman*, for *Shenton, Pain & Brown*, of Winchester.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Conley (a Bankrupt); *Ex parte* the Trustees *v.* Barclays Bank Ltd. and Others.

Farwell, J. 22nd November, 1937.

BANKRUPTCY — BANKRUPT'S OVERDRAFT — COLLATERAL SECURITY—DEPOSIT OF STOCK BY THIRD PARTIES—PAYMENT TO BANK—RELEASE OF STOCK—WHETHER FRAUDULENT PREFERENCE—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), s. 44.

To avoid the cost of examining a large number of witnesses the parties agreed that it should be first decided whether, on the assumption that all the facts relied on by the applicants could be proved they would be entitled to relief. Those facts were as follows: From 1927 to February, 1931, the bankrupt carried on a successful business in partnership. His partner having died he thereafter carried on the business alone. In April and May, 1931, his wife deposited certain War Stock with Barclays Bank as collateral security for his overdraft, without incurring any personal liability. In February, 1933, his mother similarly deposited certain War Stock with the bank. The bankrupt having opened an account at Lloyds Bank in May, 1934, his wife deposited certain War Stock to secure an overdraft. Already the business had been carried on at a loss, and in September, 1934, to the bankrupt's knowledge it was hopelessly insolvent. It was alleged that by devious and dishonest means he now got in very large sums and by the middle of November, 1934, he put his accounts in credit enabling his wife and mother to obtain the release of their securities. At the end of November, 1934, the business closed down, and in December, 1934, the debtor was adjudicated bankrupt. His trustees in bankruptcy now sought to recover the money paid to the banks on the ground that they were undue preferences within the Bankruptcy Act, 1914, s. 44.

FARWELL, J., in giving judgment, said that on the assumption of the facts stated, the payments to the banks in October and November must be taken to have been made partly at any rate with a view to preferring the wife and mother. Nothing suggested that the bankrupt intended to prefer the banks which the payments did not advantage as they were already fully protected. The banks had argued that since in October and November the accounts were being freely operated on both by payments in and payments out there was nothing to indicate that any particular payment in was made with a view to preferring the wife or mother. The applicants had argued that all payments in during those months constituted preferences. But the vital question was whether payments to bankers by a person subsequently becoming bankrupt within the prescribed period, with no intention of preferring them but with the intention of enabling securities deposited with them by third parties who were under no personal liability to them constituted an undue preference within s. 44. The principle of the administration of assets in a bankruptcy was that all creditors should be paid rateably out of them, and any dealing by the bankrupt with his property during the prescribed period before the bankruptcy putting one creditor in a more advantageous position than the others was an undue preference. If money or property formerly belonging to the bankrupt had got into the creditor's hands by undue preference the trustee in bankruptcy could recover it, and it was deemed to be part of the assets of the bankruptcy. At one time payment to a creditor with a view to prefer a surety was held not to be an undue preference (*In re Mills*, 4 T.L.R. 284; *In re Warren* [1900] 2 Q.B. 138). This was amended by the Bankruptcy and Deeds of Arrangement Act, 1913, the amendment being incorporated in s. 44 of the 1914 Act. On the construction of the section payment to a creditor constituted an undue preference, though there was no intention to prefer that creditor, with the result that the trustee in bankruptcy must recover the amount paid from him and not from the surety. His lordship preferred the decision in *In re Lyons* (1934–5) B. & C.R. 174, to that in *In re Stanley and Co.* [1925] Ch. 148. The creditor in such a case was left with his remedy against the surety, so that the loss ultimately fell on the person whom it was intended to prefer. The words in s. 44 "surety or guarantor" imported a personal liability and excluded a mere depositor, who could in no circumstances be sued by the creditor. The section was quasi-penal and must be strictly construed. If a depositor were taken to be included, a creditor would become liable to repay with no remedy over against the person intended to be preferred, since once he had parted with the securities to the depositor his rights against him or his property were ended. Further, so long as a customer's account remained open a bank could not refuse to accept money paid in, nor when the account was in credit could it refuse to release deposited securities. These motions against the banks failed as the payments sought to be impeached were not made with a view to preferring them (see *Peat* v. *Gresham Trust* [1934] A.C. 252). The applicants could not succeed either against the persons intended to be preferred as they were not creditors within s. 44.

COUNSEL: *R. Bacon* and *D. Renton*; *Morton*, K.C., and *J. M. Buckley*; *Stable*, K.C., and *J. B. Blagden*; *V. Aronson* and *H. Leon*.

SOLICITORS: *F. W. Perkins*; *Durrant Cooper & Hambling*; *Linklaters & Paines*; *Lucien Fior*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Woodward *v.* Licensing Authority for the North-Western Traffic Area.

Farwell, J. 3rd December, 1937.

ROAD TRAFFIC—SALE OF MOTOR VEHICLE—VENDOR HAVING CEASED TO CARRY ON BUSINESS—CARRIER'S LICENCE—APPLICATION BY PURCHASER—ROAD AND RAIL TRAFFIC ACT, 1933 (23 & 24 Geo. 5, c. 53), s. 11.

At the time of his death on the 9th March, 1937, F.T. was carrying on business as a haulage contractor and held an "A" licence under the Road and Rail Traffic Act, 1933, authorising him to use a particular vehicle for a period ending the 30th April, 1938. On the application of his widow, to whom letters of administration were granted, the licensing authority granted her an "A" licence authorising her to use that vehicle during the unexpired term. On the 16th April, the Commercial Motor Users Association, on behalf of the applicants, R.W. and D.W. (trading as R & D Transport), wrote informing the licensing authority that the widow was negotiating with them for the sale of the business and that an application would be made by them for an "A" licence to use the vehicle. On the 24th May, an application was made, there being filed a preliminary agreement between the parties to the sale showing the turnover while the business was carried on by F.T., two letters from customers saying they would employ the applicants, certain particulars relating to the traffic and customers of the vendor, and a statement that the business was then being managed by R.W., because the widow had not the necessary knowledge to manage it. On the 3rd June the assignment was made, and on the 4th June it was sent to the licensing authority with four letters from customers to the effect that if the application were granted they would employ the applicants instead of the vendor. The licensing authority took the view that it was necessary to publish the application in Pt. I of "Applications and Decisions," and subsequently to consider the application at a public inquiry. The applicants contended that the licensing authority had no power to do so.

FARWELL, J., in giving judgment, said that it was not for him to say whether in this particular case the licensing authority should or should not refuse the grant of the licence. His lordship was concerned to see whether, under the terms of the Act, the licensing authority had gone outside his power in proposing to publish the application and hold an inquiry before either granting or refusing the application. Having considered ss. 1, 2, 3, 5, 6, 7, and 11 of the Act, his lordship said that nothing therein in terms provided for the transfer of a licence from one person to another, but it was said by the applicants that this was an application for a licence to expire not later than an existing licence under which the vehicle to which the application related was authorised to be used for the purposes of a business which the applicants had acquired, within the meaning of the words in s. 11 (3) (*b*), and that, therefore, the application was not one to which s. 11 applied, so that although the licensing authority might refuse or grant it he had no power to publish it or hold an inquiry. The only power to hold an inquiry given under the Act was under s. 11 (5), under which the licensing authority might "hold such inquiries as he thinks necessary for the proper exercise of his functions under this Act." In such an application as this, the licensing authority had to be satisfied of various matters and also that it was within the exceptions in s. 11 (3) (*b*). To get out of s. 11 by sub-cl. (*b*), it was necessary to satisfy the licensing authority that the application related to a vehicle authorised to be used for the purposes of a business which the applicant had acquired. That presupposed that the person from whom the vehicle had been acquired was at the time of the acquisition carrying on a business. If the vendors of a vehicle though carrying on a business when the "A" licence was obtained had ceased to carry it on at the time of the sale, that would not be within s. 11 (3) (*b*). Therefore, the licensing authority had to be satisfied in that regard that the case came within it, and for that purpose was entitled to hold such inquiry as he thought necessary. To hold an inquiry it was necessary that the application should be published. The licensing authority was not bound to hold an inquiry. It was a matter of discretion. But if, having regard to the details of each case, he thought it right to do so, nothing in the Act prevented it. His lordship referred to *Ex-Army Transport Ltd.* v. *L. H. Diamond & Co.* (24 Rail & Com. Cas, 303).

COUNSEL: *G. Thesiger; V. Holmes.*

SOLICITORS: *Joynson-Hicks & Co.*, for *Henry Backhouse & Son*, of Blackburn; *Treasury Solicitor.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

The Master and Fellows of University College, Oxford *v.* Secretary of State for Air.

Lord Hewart, C.J., Branson and Porter, JJ.
15th December, 1937.

LAND—COMPULSORY ACQUISITION BY CROWN—OWNER'S RIGHT TO CLAIM COMPENSATION FOR INJURIOUS AFFECTION OF HIS REMAINING LAND—ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919 (9 & 10 Geo. 5, c. 57).

Case stated by an Official Arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919.

The Crown took some 417 acres of land in Yorkshire, belonging to the claimant college. It was stated on their behalf that the land taken lay in the middle of a larger estate belonging to the college; that there was no dispute as to the price of the land, or the amount to be paid for "severance," the only question being whether the claimants were entitled, as they contended, to damages for "injurious affection" by the use of the land taken—for instance, interference with the sporting rights, or stock breeding—by the passage of aircraft—or whether, as the Crown contended, such compensation, which could normally be recovered, could not be recovered against the Crown; and that the matter was of very great importance to the Crown, and meant £4,000 more or less to be received as compensation by the college. On behalf of the claimants, reference was made to ss. 19, 23 and 24 of the Defence Act, 1842; the Defence Act, 1854, which enabled the Lands Clauses Act, 1845, to be applied to land acquired under the Act of 1842; ss. 17, 18, 46 and 49 of the Defence Act, 1860; s. 1 of the Lands Clauses (Consolidation) Act, 1845; the Lands Clauses (Consolidation) Act (Amendment) Act, 1860; *In re The Stockport, Timperley and Altrincham Railway Company*, 33 L.J.Q.B. 251; *Cowper-Essex* v. *Local Board for Acton*, 14 App. Cas. 153; *Reg.* v. *Vestry of St. Luke's, Chelsea*, L.R. 7 Q.B. 148; *In re Laws*, 1 Exch. 441; *Reg., Ex parte Moore* v. *Abbott* [1897],2 I.R. 362; *In re Ned's Point Battery* [1903] 2 I.R. 192; and *Blundell* v. *R.* [1905] 1 K.B. 116. It was contended for the Crown *inter alia* that the Crown was in a different position from other undertakers, because, whereas a local authority acquiring land could be required to state the purpose for which it was intended to use the land, the Crown was under no such duty, and the tribunal could have no data on which to assess compensation for injurious affection; that that matter was not in the mind of the court in *In re Laws*, *supra*, the *dicta* of Chief Baron Pollock in that case being *obiter*; that, in view of the uncertainty of the purpose for which land taken by the Government would be used, if the Act of 1842 had been meant to include compensation for injurious affection, some code for its assessment would have been laid down; and that *Blundell* v. *R.*, *supra*, was wrongly decided.

LORD HEWART, giving the decision of the court, said that the case raised one question only, whether the court was of opinion that the claimants were entitled in law to claim for injurious affection to the remainder of their property by reason of the user to which the land to be purchased might be put by the respondent. The court's unanimous answer to that question was, Yes. In cases arising in that way, it was not the practice of the court to enter into reasons, but in this case they would add that they based their answer on the provisions of the Defence Act, 1842. In the opinion

of the court, the decision of *Blundell* v. *R.*, *supra*, a petition of right tried in 1905 by Ridley, J., was right.

COUNSEL: *Trustram Eve*, K.C., and *A. Capewell*, for the claimants; *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *Horatio Parker*, for the Crown.

SOLICITORS: *Field, Roscoe & Co.*, agents for *Morrell, Peel and Gamlen*, Oxford; *The Treasury Solicitor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

King Edward VII Welsh National Memorial Association *v.* **South-East Glamorgan Assessment Committee and Others.**

Lord Hewart, du Parcq and Porter, JJ.
17th December, 1937.

RATING AND VALUATION—NEW HOSPITAL—BASIS OF ASSESSMENT.

Appeal by case stated from a decision of the Rating Appeals Committee of Glamorganshire.

The respondent association appealed to the Rating Appeals Committee of Glamorganshire Quarter Sessions against an assessment in respect of a new hospital opened by the association. The appellant assessment committee contended that the hospital should be assessed on the "contractor's basis"—i.e., a percentage of the capital value. The association contended that it should be assessed on a "per bed" basis of so much for each bed available for patients. The Rating Appeals Committee, in allowing the appeal, intimated that they did not accept either submission in its entirety, and that they did not decide that, as a matter of law, the contractor's basis was illegal, or that, as a matter of law, the "per bed" basis must be used.

LORD HEWART, C.J., said that it could not be suggested that either method was legally paramount or such as to exclude the other. The justices, having properly given attention to both methods of testing what was fair, had decided that their task was the task prescribed by the statute, namely, to ascertain the rent which would be paid by the hypothetical tenant. The decision of the Rating Appeals Committee seemed accurately to set out what was the law. There was no magic in the rating of a hospital, voluntary or otherwise. The question was what a tenant might be expected to pay by the year, all relevant deductions being made. In solving that problem there was no law as to what evidence might be required. The court was being invited in effect to prescribe a precise method by which the rent was to be arrived at. If that had been intended, it could have been accomplished in a few words of a statute, but it had not been done. The justices took the precisely correct course of listening to both contentions and holding themselves not bound to accept either in its entirety.

DU PARCQ and PORTER, JJ., agreed.

COUNSEL: *John Morris*, K.C., and *Edmund Davies*, for the assessment committee; *Trustram Eve*, K.C., and *Carey Evans*, for the association.

SOLICITORS: *Cecil-Williams & Co.*, agents for *Elfyn David & Hamblen*, Cardiff; *Sharpe, Pritchard & Co.*, agents for *J. Colenso Jones*, Pontypridd.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.

MR. G. W. KING.

Mr. Gilbert Walter King, O.B.E., formerly Assistant Judge of H.M. Supreme Court, Shanghai, died on Thursday, 23rd December, at his home at Reigate at the age of sixty-six. Mr. King was educated at Brighton Grammar School and London University, where he took the degree of LL.B. He went to Shanghai in 1903 as Assistant Clerk of the Supreme Court, of which he became Registrar in 1907. He was called to the Bar by Gray's Inn in 1919. In 1925 and 1929 he was Acting Judge of the High Court of Wei-hai-wei and was Assistant Judge in the Supreme Court at Shanghai from 1927 to 1931, when he retired to England.

MR. L. W. ENGLISH.

Mr. Lawrence William English, solicitor, senior partner in the firm of Messrs. English & Poll, of Norwich, died on Sunday, 19th December, at the age of eighty-three. Mr. English served his articles with Messrs. W. H. Tillett & Co., and was admitted a solicitor in 1875. In 1928 he was joined in partnership by Mr. Cuthbert H. Poll, who had been associated with him since 1919. Mr. English became a member of the Norwich City Council in 1891.

MR. W. H. FOSTER.

Mr. Walter Henry Foster, solicitor, a former President of The Law Society, died at Kensington on Monday, 27th December. Mr. Foster, who was admitted a solicitor in 1887, was a member of the firm of Messrs. Milles, Jennings, White and Foster, solicitors, of Little College Street, Westminster, S.W.

MR. W. Y. GROVES.

Mr. William York Groves, solicitor, senior partner in the firm of Messrs. Groves & Gammage, of Northampton, died on Saturday, 25th December. Mr. Groves, who was admitted a solicitor in 1904, was Coroner for Mid-Northamptonshire.

MR. A. KIRKE SMITH.

Mr. Arthur Kirke Smith, formerly Solicitor to the Government of India, died at Risalpur on Saturday, 25th December, at the age of fifty-nine. Mr. Kirke Smith was educated at Charterhouse and Trinity College, Cambridge, and was articled to Messrs. Freshfields, solicitors, of Old Jewry, E.C. He went to Bombay to join the firm of Messrs. Little & Co., in 1909, and about sixteen years later he was appointed Solicitor to the Government of Bombay. In 1932 he was appointed Solicitor to the Government of India in the Legislative Department, and he held that post until this year.

MR. J. W. REID.

Mr. James William Reid, retired solicitor, of Cheapside, E.C., and Ealing, died at Chichester on Saturday, 18th December, in his eighty-fourth year. Mr. Reid was admitted a solicitor in 1878.

Parliamentary News.

Progress of Bills.

House of Lords.

Air-Raid Precautions Bill.
Royal Assent. [22nd December.

Conveyancing Amendment (Scotland) Bill.
Read Third Time. [21st December.

Empire Exhibition (Scotland) Order Confirmation Bill.
Royal Assent. [22nd December.

Glasgow Boundaries Order Confirmation Bill.
Royal Assent. [22nd December.

Infanticide Bill.
Read First Time. [21st December.

Poor Law (Amendment) (No. 2) Bill.
Read First Time. [21st December.

Public Works Loans (No. 2) Bill.
Royal Assent. [22nd December.

Quail Protection Bill.
Royal Assent. [22nd December.

Rothesay Harbour Order Confirmation Bill.
Royal Assent. [22nd December.

Trade Marks Bill.
Read First Time. [21st December.

House of Commons.

Cotton Industry Bill.
Reported, without Amendment. [21st December.
Criminal Procedure (Scotland) Bill.
Read First Time. [22nd December.
Dogs Act (1871) Amendment Bill.
Read Second Time. [22nd December.
Ministry of Health Provisional Order (Bridgwater Extension) Bill.
Read Second Time. [22nd December.
National Health Insurance (Amendment) Bill.
Read First Time. [21st December.
Snowball Trading Bill.
Read First Time. [22nd December.
Unemployment Insurance Bill.
Read Third Time. [21st December.

Questions to Ministers.

LAW REPORTS.

Mr. CASSELS asked the Lord Advocate whether Law Reports are granted free of charge to all courts in Scotland; and, if not, is he prepared to place Scottish courts on a similar footing to those in England in this connection.

The LORD ADVOCATE (Mr. T. M. Cooper): So far as I can trace, the Court of Session and the High Court of Justiciary are the only Scottish courts which are supplied with Law Reports at the public expense. With regard to the position in the inferior courts of Scotland and England, I am making further inquiry and shall communicate with the hon. Member in due course.

Mr. GOLDIE: Can the Lord Advocate say why Scottish Law Reports do not find a place in English courts.

Mr. R. GIBSON: Arising out of the original reply, will the Lord Advocate keep in mind that there are at present a great many sets of reports on the market because there have been so many legal firms amalgamating recently. Is not this an appropriate time for the Government to purchase several of these sets of law reports and so equip the inferior courts with Law Reports. [21st December.

HOUSING.

DEMOLITION ORDERS.

Sir N. GRATTAN-DOYLE asked the Minister of Health whether his attention has been called to the difficulties arising from the absence of any provision giving local authorities power to cancel or withdraw a demolition order when the local authority considers such step desirable; and whether he will propose an amendment of sub-s. (1) of s. 13 of the Housing Act, 1936, so as to give local authorities such power.

The PARLIAMENTARY SECRETARY TO THE MINISTRY OF HEALTH (Mr. Bernays): My right hon. Friend's attention has been drawn to one or two individual cases where proposals have been submitted after orders have become operative. The question was considered by the Central Housing Advisory Committee who did not recommend any alteration in the law, and my hon. Friend will, I think, appreciate the difficulties involved by a proposal to give a local authority discretion to vary an order when it has once been confirmed. [21st December.

RENT RESTRICTION (COMMITTEE'S REPORT).

Mr. J. J. DAVIDSON asked the Secretary of State for Scotland whether the Departmental Committee appointed by the Government to report on the continuance of the Rent Restrictions Act has taken evidence from Scottish tenants; and when the report will be circulated to Members for their consideration.

THE SECRETARY OF STATE FOR SCOTLAND (Mr. Elliot): The report of the Committee on the Rent Restrictions Acts has now been published, and the hon. Member will have seen that the Committee heard evidence on behalf of tenants in Scotland. [21st December.

SOLICITORS ACT, 1933.

Colonel BURTON asked the Attorney-General whether, in view of recent defaults among solicitors in connection with moneys and securities belonging to their clients, he is prepared to introduce legislation which would enable clients to demand a note from their solicitor, countersigned by a bank, to the effect that the moneys or securities held by their solicitor on their behalf were deposited with such bank and had been earmarked as belonging to the client subject only to legitimate charges.

The ATTORNEY-GENERAL: Rules made by the Council of The Law Society under the Solicitors Act, 1933, and approved by the Master of the Rolls, require solicitors to keep such books and accounts as may be necessary to show and distinguish (*a*) moneys received from or on account of, and moneys paid to or on account of, each of their clients, and (*b*) the moneys received and the moneys paid on their own account. They also require every solicitor who holds or receives money on account of a client without undue delay to pay it into an account at a bank distinguished as a "client account." They also empower The Law Society to require a solicitor to produce his books so that they may see that he has complied with the Rules. Frequent use has been made of the Rules, and The Law Society believe that they have been effective for the purpose for which they were intended, and that recent defalcations have been in respect of the period before the Rules came into operation, that is, the 1st January, 1935. It is not proposed therefore to introduce further legislation. [22nd December.

LAND REGISTRY.

Mr. JAGGER asked the Attorney-General what were the annual surpluses of income over expenditure in the case of the Land Registry during each of the years 1921–22 to 1936–37; and to what purposes have these surpluses been devoted.

The ATTORNEY-GENERAL: The figures are as follows:—

	Surplus.	Deficit.
1921–22	—	13,594
1922–23	26,082	—
1923–24	39,667	—
1924–25	43,145	—
1925–26	70,217	—
1926–27	100,014	—
1927–28	82,774	—
1928–29	70,742	—
1929–30	76,952	—
1930–31	44,287	—
1931–32	30,973	—
1932–33	50,458	—
1933–34	84,913	—
1934–35	80,216	—
1935–36	46,542	—
1936–37	43,292	—

During the years referred to £203,677 was contributed to the Land Registry Insurance Fund, £136,773 was applied in part repayment of the outstanding capital liability on the Land Registry building and surpluses aggregating £536,230 (of which approximately £358,881 accrued from the Land Charges and Agricultural Credits Departments and the Middlesex Deeds Department) were surrendered to the Exchequer.

The annual surplus in the Land Registry being greater than was required to give a margin of working safety, the fees in the Land Registration Department were reduced in 1926 and 1930; in the Land Charges Department in 1926 and in 1928; and in the Middlesex Deeds Department in 1928. In all three Departments the fees are in consequence substantially below the pre-war scales. [22nd December.

CORONERS.

Sir A. WILSON asked the Home Secretary whether, and, if so, when it is proposed to introduce legislation to give effect to the Departmental Committee on Coroners which reported two years ago.

Sir S. HOARE: I am not in a position to promise legislation on this topic in the near future. [23rd December.

COURTS OF SUMMARY JURISDICTION.

Sir A. WILSON asked the Home Secretary whether and, if so, when the Government will institute a public inquiry into certain aspects of the work of courts of summary jurisdiction, with a view to considering what amendments are desirable for facilitating consolidation of the existing law upon lines which will promote simplicity and uniformity.

Sir S. HOARE: There have been two inquiries in recent years into certain aspects of the work of courts of summary jurisdiction and the question of further inquiry about other aspects of their work is now under consideration. [23rd December.

The next general quarter sessions for the Borough of Stamford will be held on Wednesday, 19th January, at 11.30 a.m.

Rules and Orders.

THE MATRIMONIAL CAUSES RULES, 1937, DATED DECEMBER 8, 1937. [S.R. & O., 1937, No. 1113/L.14. Price 1s. net].

THE TITHE RULES, 1937, DATED DECEMBER 9, 1937. [S.R. & O., 1937, No. 1144/L.15. Price 7d. net].

THE RULES OF THE SUPREME COURT (No. 3), 1937, DATED DECEMBER 17, 1937. [S.R. & O. 1937, No. 1150/L.16. Price 3d. net].

THE MATRIMONIAL CAUSES AT ASSIZES ORDER, 1937, DATED DECEMBER 21, 1937.

I, The Right Honourable Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, by virtue of section 70 of the Supreme Court of Judicature (Consolidation) Act, 1925,* and all other powers enabling me in this behalf, do, with the concurrence of the Right Honourable Gordon Lord Hewart, Lord Chief Justice of England, and of the Right Honourable Sir Frank Boyd Merriman, President of the Probate, Divorce and Admiralty Division of the High Court of Justice, hereby order as follows :—

1.—(i) The classes of matrimonial causes which, subject to Rules of Court, may be tried and determined by a Commissioner acting under a Commission of Assize, shall be—

(*a*) undefended causes within the meaning of the Matrimonial Causes Rules, 1937,† and

(*b*) causes brought or defended under Part IV of Order XVI of the Rules of the Supreme Court (which relates to proceedings by and against Poor Persons).

(ii) The Matrimonial Causes at Assizes Order, 1922,‡ is hereby revoked.

2. This Order may be cited as the Matrimonial Causes at Assizes Order, 1937.

Dated the 21st day of December, 1937.

Hailsham, C.

We concur,

Hewart, C.J.
F. B. Merriman, P.

* 15 & 16 Geo 5, c. 49. † S.R. & O., 1937, No. 1113.
‡ S.R. & O., 1922 (No. 757), p. 1042.

Societies.

The Law Society.

SCHOOL OF LAW.

Copies of the annual prospectus for the Session 1937–1938 and of the detailed time-table for the Spring Term can be obtained on application to the Principal's Secretary.

The Principal (Dr. G. R. Y. Radcliffe) will be in his room to advise students on their work on Friday, 7th January, from 10.30 a.m. to 12.30 p.m., and from 2 p.m. to 4.30 p.m. The first lectures will be held on 12th January.

For intermediate students there will be courses on (i) Public Law (The Constitution), (ii) The Law of Property in Land (Part I), (iii) The Law of Contract, (iv) Accounts and Book-keeping, and (v) Trust Accounts.

Intermediate students must notify the Principal's Secretary not later than 8th January on the entry form, whether they wish to take morning or afternoon courses.

The first final examination under the new scheme will take place in November, 1938. The final subjects on the time-table for the Spring Term are (i) The Law of Wills and of Intestate Succession and of the Administration of Assets, including the Procedure and Practice of the Probate Court; Death Duties, (ii) Criminal Law and Procedure and Proceedings before Magistrates, and (iii) Sale of Goods and Bailments. Teaching will also be provided during the term in two optional subjects for the new final examination, viz., (i) The Law of Divorce and (ii) Local Government and Administrative Law (Part I).

There will also be courses on (i) Equity, (ii) Contract, (iii) Criminal Law, and (iv) Jurisprudence (Part II) for Honours and Final LL.B. students; and on (i) English Constitutional Law and History (Part I), and (ii) Roman Law (Part II) for Intermediate LL.B. students.

Students can obtain copies of the regulations governing the three studentships of £40 a year each, offered by the Council for award in July next, on application to the Principal's Secretary.

The Medico-Legal Society.

Mr. Justice HUMPHREYS, president, took the chair at the annual dinner of the Medico-Legal Society, on 17th December, at the Trocadero Restaurant. After the Royal toasts had been honoured, LORD ATKIN proposed the toast of "Medicine and Law."

He said that there had been time, now far distant, when anyone proposing the toast of "Medicine and Law" had been inclined to dwell on the differences which arose from time to time between them. The Medico-Legal Society had brought members of the two professions together. They had learned from each other's difficulties, and each understood the point of view of the other better than before. Differences must at times occur, as between the doctor and the lawyer who were summoned for speeding and charged in their own courts. The lawyer had to try the doctor, the doctor the lawyer. The lawyer reprimanded the doctor, and fined him $10. The doctor then tried the lawyer and said: "This is a very serious charge and it is obviously one that ought to be put down, because this is the second case of its kind to come up to-day. I must mark the enormity of the offence by a fine of $100."

Sir WILLIAM WILLCOX in his reply recalled that Lord Atkin had been president of the society from 1920 to 1927, those trying years when it was so difficult for societies to flourish. Lord Atkin's help at that time had brought the society into prominence and the great gathering that night was a direct result of his work.

Mr. Justice HAWKE, also in reply, said that he had been sent a copy of the "Transactions" for the month of October, 1937—a profoundly interesting volume, which had raised many points of law he had not previously considered. Every first offender must now be examined, but it was a difficult matter to discover him. Might not the offence have been caused by what the offender's grandfather did in 1872? On such matters did the giving of three or six months depend. The first offender—a delinquent, not a criminal—must go through a course of medical treatment, which was in many cases a right and proper thing. But should that treatment begin when the offender first broke out into crime, or in his cradle?

Sir EDWARD TINDAL ATKINSON, in proposing the toast of "The Medico-Legal Society," said that it represented an alliance between two great professions. It pursued two ideals: the ascertainment of truth and the advancement of the ends of that justice of which they were so proud.

THE PRESIDENT described a dream in which he had failed to gain admission to Heaven as President of the Medico-Legal Society, but had to wait until the Director of Public Prosecutions also arrived to give him a reference. Dr. Henslowe Wellington, one of the founders of the society and its first honorary secretary thirty-six years ago, and Sir Walter Schroeder, also a founder and its honorary treasurer for thirty years, were both present at the dinner. The society which had started with fifty-five members, now numbered 308, in all parts of the world. Definite arrangements had been made for the affiliation of other medico-legal societies and the recognition of branch societies. His Honour Judge Leigh, the president of the Manchester Society (which was under the patronage of Mr. Justice Singleton) was at the dinner. There was also a medico-legal society in Essex.

Dr. R. HENSLOWE WELLINGTON proposed the toast of "The Guests," and described the photograph of the first dinner of the society—very modest in comparison with the dinner that night. There had been no ladies at that first dinner, for it was only during the last few years that members had had the pleasure of their company. He welcomed the formation of societies in Manchester and Essex, and hoped that eventually these might lead to the formation of an medico-legal institute, which had been his original idea. He hoped that Sir Robert Pickard would use his influence as Vice-Chancellor of the University of London to found such an institute.

Mr. Justice DU PARCQ observed, in reply, that the most obtuse would have gathered by that time in the evening that the society whose guest he was consisted of lawyers and doctors. Lawyers induced in him a quiet confidence, but he had never been able to overcome the awe and alarm which doctors always caused him, and when it had dawned upon him that the assembly he was expected to address consisted very largely of doctors he could command no words but "ninety-nine." He hoped that he would not be considered of a very material mind if he commented on the excellence of the meal he had enjoyed that evening. The lawyers of the assembly could have had little hand in its preparation, for were they not used to plain living and high thinking? The doctors must have been responsible for it, and he intended to keep the menu as an example of the diet prescribed by Harley Street.

Sir ROBERT H. PICKARD, also in reply, referred to Dr. Wellington's hope that a medico-legal institute might be

founded in London, and said that the project principally depended on the establishment of endowments. He told the story, which he considered to be both legal and medical, of the man who had enjoyed a large meal in a restaurant but found that he was unable to pay the bill. The waiter brought the manager, but the man still protested that he could not pay. "I'll get it out of you," the manager retorted, and left the room. He returned with a large revolver with which he menaced the culprit. "Whatever's that?" the man asked in terror. "A revolver," the manager replied. "Oh, that's all right," said the defaulter, "I thought it was a stomach pump!"

The Hardwicke Society.

A meeting of the Society was held on Friday, 17th December, at 8.15 p.m. in the Middle Temple Common Room, the President, Mr. G. E. Llewellyn Thomas, in the chair. Major A. G. Church, D.S.O., M.C., moved: "That the Banking Community is a menace to the Civilised World." Mr. A. Newman Hall (Ex-President) opposed. There also spoke, Mr. J. E. Harper, Mr. Walter Stewart, Mr. C. E. Scholefield, Mr. Bernard Simmons, Mr. Lewis Sturge (Hon. Treasurer), Captain C. O. Cummins, Mr. J. A. Petrie (Immediate Past President) and Mr. R. H. Hunt. The Hon. Mover having replied, the House divided, and the motion was lost by three votes.

Legal Notes and News.

Honours and Appointments.

The King, on the recommendation of the Home Secretary, has been pleased to approve the following appointments:—

Mr. W. H. CARTWRIGHT SHARP, K.C., to be Recorder of Wolverhampton in place of Mr. David Davies, K.C., who has been appointed a County Court Judge.

Mr. JOHN FLOWERS, K.C., to be Recorder of Southend-on-Sea, in place of the late Lord Strathcarron, K.C.

Mr. CHARLES DOUGHTY, K.C., to be Recorder of Guildford in place of Mr. Flowers.

Mr. ERIC NEVE to be Recorder of Canterbury in place of Mr. Doughty.

Mr. COLIN PEARSON to be Recorder of Hythe in place of Sir Walter Monckton, K.C.V.O., K.C., who has resigned.

Mr. Justice CRISP has been appointed Chief Justice of the Supreme Court of Tasmania in succession to Sir Herbert Nicholls, who is retiring.

Mr. JOHN HOLT, LL.B., at present Assistant Solicitor to the Borough of Hackney, has been appointed Solicitor to the Hearts of Oak Benefit Society. Mr. Holt is twenty-nine years of age and served his articles with Mr. T. E. Jobling, of the firm of Jobling, Knape & Jobling, of Burnley and Blackpool. He was admitted a solicitor in 1932.

Professional Announcements.

(2s. per line.)

Mr. WILSON BUTLER, solicitor, of Broughton-in-Furness, Lancs, has taken into partnership Mr. EDGAR SATTERTHWAITE, who has been associated with him in his practice for some years. The practice will be continued under, as hitherto, the style or name of "THOMAS BUTLER & SON."

Winter Assizes.

The following days and places have been fixed for holding the Winter Assizes:—

SOUTH EASTERN CIRCUIT.—SINGLETON, J.—Tuesday, 11th January, at Huntingdon; Thursday, 13th January, at Cambridge; Wednesday, 19th January, at Ipswich; Tuesday, 25th January, at Norwich; Tuesday, 1st February, at Chelmsford. BRANSON, J.—Tuesday, 15th February, at Hertford; Saturday, 19th February, at Maidstone; Wednesday, 2nd March, at Kingston; Saturday, 12th March, at Lewes.

OXFORD CIRCUIT.—LAWRENCE, J., and PORTER, J.—Tuesday, 18th January, at Reading; Saturday, 22nd January, at Oxford; Thursday, 27th January, at Worcester; Wednesday, 2nd February, at Gloucester; Wednesday, 9th February, at Monmouth; Wednesday, 16th February, at Hereford; Monday, 21st February, at Shrewsbury; Monday, 28th February, at Stafford.

NORTHERN CIRCUIT.—LEWIS, J., and TUCKER, J.—Monday, 17th January, at Appleby; Wednesday, 19th January, at Carlisle; Monday, 24th January, at Lancaster; Monday, 31st January, at Liverpool; Monday, 28th February, at Manchester.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 6th January 1938.

	Div. Months.	Middle Price 29 Dec. 1937.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	109¼xd	3 13 3	3 6 8
Consols 2½%	JAJO	74⅛	3 7 5	—
War Loan 3½% 1952 or after ...	JD	101½	3 9 0	3 7 6
Funding 4% Loan 1960-90	MN	112½	3 11 1	3 3 11
Funding 3% Loan 1959-69	AO	97¾	3 1 4	3 2 3
Funding 2¾% Loan 1952-57	JD	95¼	2 17 9	3 1 7
Funding 2½% Loan 1956-61	AO	90	2 15 7	3 2 4
Victory 4% Loan Av. life 22 years ...	MS	111	3 12 1	3 5 9
Conversion 5% Loan 1944-64 ...	MN	114½	4 7 4	2 7 6
Conversion 4½% Loan 1940-44 ...	JJ	106	4 4 11	2 8 1
Conversion 3½% Loan 1961 or after	AO	102¼	3 8 6	3 7 2
Conversion 3% Loan 1948-53 ...	MS	101½	2 19 1	2 16 7
Conversion 2½% Loan 1944-49 ...	AO	98	2 11 0	2 14 3
Local Loans 3% Stock 1912 or after	JAJO	87	3 9 0	—
Bank Stock	AO	342½	3 10 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	78	3 10 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	85½	3 10 2	—
India 4½% 1950-55	MN	112	4 0 4	3 5 6
India 3½% 1931 or after	JAJO	93	3 15 3	—
India 3% 1948 or after	JAJO	79½	3 15 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	111	4 1 1	3 16 10
Sudan 4% 1974 Red. in part after 1950	MN	107⅛	3 14 5	3 5 8
Tanganyika 4% Guaranteed 1951-71	FA	109	3 13 5	3 2 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106	4 4 11	2 17 9
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	91	2 14 11	3 3 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 12 1
Australia (Commonw'th) 3% 1955-58	AO	90	3 6 8	3 13 9
*Canada 4% 1953-58	MS	109	3 13 5	3 5 5
*Natal 3% 1929-49	JJ	98	3 1 3	3 4 4
New South Wales 3½% 1930-50 ...	JJ	98	3 11 5	3 14 2
New Zealand 3% 1945	AO	98	3 1 3	3 6 1
Nigeria 4% 1963	AO	108	3 14 1	3 10 6
Queensland 3½% 1950-70	JJ	97	3 12 2	3 13 2
*South Africa 3½% 1953-73	JD	102	3 8 8	3 6 8
Victoria 3½% 1929-49	AO	99	3 10 8	3 12 1
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	86	3 9 9	—
Croydon 3% 1940-60	AO	95	3 3 2	3 6 6
*Essex County 3½% 1952-72 ...	JD	101	3 9 4	3 8 4
Leeds 3% 1927 or after	JJ	83xd	3 12 3	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	72	3 9 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85⅛	3 10 2	—
Manchester 3% 1941 or after ...	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	96½	2 11 10	2 17 0
Metropolitan Water Board 3% "A" 1963-2003	AO	88½	3 7 10	3 8 11
Do. do. 3% "B" 1934-2003 ...	MS	90	3 6 8	3 7 7
Do. do. 3% "E" 1953-73 ...	JJ	95xd	3 3 2	3 4 9
*Middlesex County Council 4% 1952-72	MN	107	3 14 9	3 7 11
* Do. do. 4½% 1950-70	MN	112	4 0 4	3 6 10
Nottingham 3% Irredeemable ...	MN	85	3 10 7	—
Sheffield Corp. 3½% 1968	JJ	101xd	3 9 4	3 8 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	109xd	3 13 5	—
Gt. Western Rly. 4½% Debenture ...	JJ	116½xd	3 17 3	—
Gt. Western Rly. 5% Debenture ...	JJ	127½xd	3 18 5	—
Gt. Western Rly. 5% Rent Charge ...	FA	125½xd	3 19 8	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126	3 19 4	—
Gt. Western Rly. 5% Preference ...	MA	117½	4 5 1	—
Southern Rly. 4% Debenture ...	JJ	106¼	3 15 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	105½	3 15 10	3 13 6
Southern Rly. 5% Guaranteed ...	MA	125	4 0 0	—
Southern Rly. 5% Preference ...	MA	114½	4 7 4	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.